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PROCEEDINGS

OF THE

BAR ASSOCIATION

OF THE

STATE OF NEW HAMPSHIRE

N. S., Vol. 4, No. 4

1920

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BAR ASSOCIATION

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1920

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PUBLICATIONS

OF THE

Bar Association of the State of New Hampshire

NEW SERIES, VOLUME FOUR . . . . PART FOUR
(OLD SERIES . . . . . VOLUME NINE)

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PRESIDENT'S ADDRESS.

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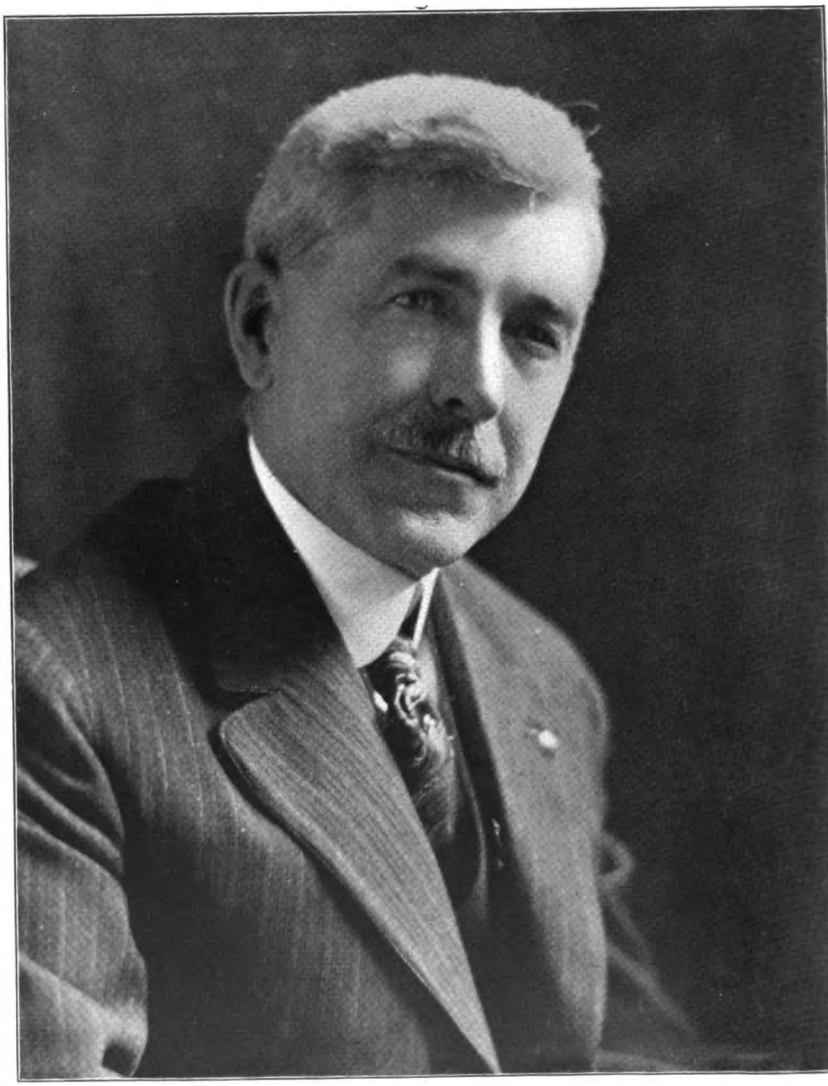

LESLIE P. SNOW.

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PRESIDENT'S ADDRESS.

LESLIE P. SNOW.

We represent, as we meet here this afternoon, whatever there is of unity and of organized effort in the legal profession in New Hampshire,—a profession which should be, in the words of the constitution of our Association, "felt as a strong conservative power in the community, always in favor of good law and good government." There has never been a time when there was greater need than now for that strong conservative force which the bar of the country has habitually exercised in behalf of law and order and good government.

The change which the social and industrial life of the nation has undergone during the last five years, seems almost to have affected the moral fibre of our people; we are living upon a false basis and with false ideals. In the economic world we see everything distorted,—as though we were looking into the mirrored surface of a globe: values are inflated; extravagance is rampant; inefficiency is the rule; the hand of labor is raised against capital, and the hand of capital against labor.

We are too likely to attribute these ills solely to the demoralizing effects of the world war. The basic causes, however, are deeper, and are but accentuated by the conditions incident to the great struggle.

A century ago the individual saw his production through from the raw material to the finished article, which he marketed himself. To-day he does but a small bit in the process, and gets a pay envelope. Under former conditions production required the exercise of many if not all of the individual's faculties. To-day we have a highly impersonal system in which the individual has opportunity for the exercise of only

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a single trained faculty. Emphasis has been put upon the speed and dexterity with which he turns off his part. Such an individual is a very different social unit than the all-round and independent man of former generations.

Again, the great influx of foreigners from the weaker and more oppressed peoples of Europe, during the last quarter of a century, who have brought with them their inheritance of hates, has diluted the sterling character of our earlier stock

The mental slant of the worker, stunted by the monotonous performance of a single movement in industry, and herded with a great number of other workers, through our industrial concentration; and the false ideals of the undigested foreigner, with no conception of the principles of our political system, and an inborn hatred for governmental control, furnish ready material not only for the professional agitator, but also for the political demagogue who loses no opportunity to appeal to social inequality or racial prejudice. These conditions, aggravated by the disorganization of industry incident to the war, are giving rise to novel and serious problems.

Of all these problems the most vital is the constantly recurring conflict between employer and employees. Numerous experiments are being tried by managements and labor to solve the problem among themselves. In one experiment the employer extends to labor an advisory part in the management, but without power, similar to the rights accorded by the late Czar to the Duma. In this way the management, through discussion, gets the reaction of labor upon its rules. Another experiment, that of the Goodyear Tire & Rubber Company, is patterned after our representative form of government. A citizenship in industry, with limitations of age, literacy, nativity or naturalization, and length of service, elects, by secret ballot, a house and senate, with executive functions and limited veto power in the management. In another industry,—the clothing industry of New York,—labor and capital each employ experts and legal advisers, who constitute a legislative

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adjustment board, which builds up a body of principles in accordance with which all questions in dispute are to be determined. The referees, who sit in case of difference, decide, not according to their ideas of justice, but in accordance with this body of principles,—the common law of the industry. Some two hundred experiments of which these merely serve as illustrations are being tried out in this country.

Alongside of these experiments we find a mass of proposed experimental legislation. When one of these voluntary plans fails, or falls short of the expected results, the radical elements on both sides naturally seek to gain their respective ends through legislation or governmental interference. Similarly, the protests of the public, the more or less disinterested victim of the disputes between capital and labor, have also given rise to movements for governmental coercion in industrial disputes. To this end various statutory and constitutional provisions, some of them of a most radical nature, have been proposed in Congress and in different state legislatures.

The Cummings bill, which in its original draft made strikes illegal and provided for punishments and compulsory arbitration, was amended until it retains but little of its mandatory form, and makes publicity the only penalty for disobedience. The California Statute of 1915, forbids strikes until after an investigation, which is made compulsory. The Kansas law, however, is the outstanding experiment which attracts the most attention. As this statute is to be the subject of the address of the speaker of the afternoon, I will only refer to it in passing. It outlaws the right of labor to strike. A court of Industrial Relations includes within its jurisdiction not only public utilities but industries involving the production of food and clothing and the mining of coal, which the statute declares to be matters of public interest.

If the statute should be held constitutional Kansas will be the national proving ground for the application of the

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principles of compulsory arbitration. A state like Kansas, where there are few congested manufacturing centers, luckily affords a laboratory for experimentation with a minimum of danger. The bar may well watch the experiment with interest.

It is but fair to assume that these laws are but forerunners of more radical and dangerous experiments. There is bound to be a persistent effort to find a panacea for social and industrial ills in legislation; some of it will be worthy, some of it will be vicious. The need of intelligent and discriminating judgment in the making, interpreting and administering of our laws becomes emphasized as we find ourselves approaching a period in which there is certain to be large experimentation in law making.

Our form of government and our social order are on the defensive. Our easy going assumption, of several generations in duration, that the present order is as immutable as the heavens is being rudely awakened by the preachment of doctrines by imported agitators who have brought with them their inherited disrespect for all governments. Their insidious dogmas find easy root among our foreign and less intelligent elements, and sometimes even permeate our strongest and most conservative labor organizations. It was only a year ago that the American Federation of Labor adopted a resolution declaring that "our Courts and judges have been disregarding the rights of the people and exercising powers more tyrannical than any assumed by the most tyrannical despot ever known in history" and further described our Courts as the "sinister influence which is sapping the life from our institutions and creating the worst sort of autocracy." Such a declaration from such a source should cause us to look carefully at the laws which our Courts are bound to construe.

Repressive legislation is not curative. Bolshevism and the doctrines of the I. W. W. find their adherents in our dissatisfied classes. If their complaints grow out of injustice or the failure to understand a vital need, a permanent

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solution will not be found in repressive measures. It has been well said that you can export and confine men but you cannot export or confine ideas. Ideas born of injustice must be met with measures of justice or they will continue to menace. Repressive laws only afford a safe-guard while the curative process is working out.

Lawyers by reason of their education and experience are better fitted to deal with these legislative problems than any other profession or class in the community. In industrial questions they qualify neither as laborers nor capitalists, but rather belong to the injured third class, and they will therefore come to the problem with comparatively impartial as well as judicial minds. They are by training, however, predisposed to favor the persistent enforcement of law and order. The "conservatism" which the Constitution of the Bar Association calls for from the profession, and which the ferment of the present day demands, is not necessarily opposition to change, but rather a firm adherence to general principles in their application to changing conditions. Of these the most vital is the general principle that all change must proceed by means of the orderly processes of the law.

The best contribution which the bar can make to the solution of the problem is, of course, to send to our legislative halls its members of demonstrated character, judgment, and efficiency. Having in mind the larger power and usefulness to be expected from organized effort, however, it seems to me that the next best aid must be by such collective action of the bar as would place its organized strength at the service of the state. As an association we now take no part in shaping legislation; we must admit, I believe, that we are not making the best use of our Bar Association in this respect, nor are we giving our State such an advantage of our professional knowledge, experience and influence as it has a right to expect and demand.

The continuance of this body as an active association for

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years [1] and the presence here of so many distinguished members of the bench and bar, is some evidence from which it can be inferred that the organization has served a real purpose.

A review of the published reports of the Association discloses that it has well justified its existence in many ways. The Association and its predecessors have brought together annually for thirty-seven years the leading members of the bar. Besides an address from its president the annual program has provided, by way of intellectual stimulation for

[1] *Note.*—The charter of the Bar Association of the State of New Hampshire was originally granted by the Legislature, on July 2, 1873, to twenty-four distinguished members of the bar,—Ira Perley, Harry Bingham, William P. Wheeler, Charles H. Bell, William Barrett, A. P. Carpenter, Edward D. Rand, John J. Bell, John H. George, Mason W. Tappan, James F. Briggs, John Farr, Asa Fowler, Henry Haywood, A. S. Wait, Ossian Ray, Austin F. Pike, John Y. Mugridge, F. A. Faulkner, Edward Farrar, William M. Chase, C. W. Stanley, A. F. Stevens and John M. Shirley.

The Association was chartered for the "purpose of maintaining the honor and dignity of the profession of the law, and cultivating social relations among its members and increasing its usefulness in promoting the due administration of justice." The fact, however, that the charter authorized the Association to hold real and personal estate to an amount not exceeding five hundred thousand dollars for the purpose of establishing in the State a library building and furniture indicates that the pressing need which actuated its authors was to provide better library facilities. The character of the incorporators, all of whom are now deceased, and their known leadership, not only at the bar but also in the affairs of state, warrants the belief that the Association was an important factor in securing the necessary appropriations for the establishment and maintenance by the State of the splendid library now available to the members of the bar of the State and their guests.

The corporation, so far as I can learn, held no social functions and put on no literary program. It ceased to hold its annual meetings after 1878. The social and literary activities were left to two local associations. The first of these, the Grafton and Coös Counties Bar Association, was organized December 12, 1883, and held annual meetings for sixteen years. The other, the Southern Bar Association was organized in 1892 and held eight annual meetings. In 1899 the charter of the State Association, which had lain in abeyance since 1878, was revived, and under it the two last named associations were consolidated.

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the bar, an address upon a timely topic by some speaker of national reputation. The Association has maintained in its published annual reports a medium for preserving the biographies of distinguished members. It has annually provided a social program which has materially helped to maintain and increase friendly acquaintance and social intercourse among the members of the bar. Too great credit cannot be given to our past officers for their accomplishments along these lines which have made the Association a real force in carrying out its chartered purposes.

In view however of the seriousness of the times, it does not seem to me that we as an Association are "doing what *we may*," in the words of our Constitution, to make our profession "felt as a strong conservative power" in the state in the making of good laws, and in the promotion of "the cause of good government and the general welfare of the state." For this reason I wish to draw the attention of the bar to the advisability of a somewhat more definite and constructive program at our meetings. While timely subjects have frequently been admirably treated in our annual addresses, I do not find that we have ever adopted any definite and continuous program by which the Association assumes a part in the initiation or guidance of needed changes in our laws. In such a program, I believe we will find a way to the performance of our collective duty to the State, and I am going to assume at this time to suggest it and to urge its trial.

We have two annual meetings of this Association between the biennial sessions of our General Court, one following the first session by about two months, the other anticipating the succeeding session by six months. This chronology affords an ideal opportunity (1) for the consideration of the accomplishments and mistakes of the expiring legislature; (2) for the discussion of the work left unfinished or undone, as well as of current questions requiring legislative action; (3) after such intelligent consideration, for recommendation as to proposed legislation.

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A solution of our problem, to be effective, must provide for a definite and continuous program. The executive officers must be charged with the responsibility of carrying it out. It should be made the constitutional duty of the President, biennially, before or sometime during the legislative session, to secure the services of one or more members of the bar, preferably members of the judiciary committees of the House or Senate, who shall prepare and submit at the annual meeting of the Association in June, a review of the work of the General Court. At such annual meeting a legislative committee, preferably under the chairmanship of one of the attorneys who have prepared such a review, should be appointed to act as a clearing-house, through which during the next year, members of the bar may submit proposals for such changes in our laws as seem to them desirable. This committee should be required to submit at the next annual meeting of the Association definite questions for discussion by the bar in open forum, notice of the questions being given in advance. This committee should then be empowered to represent the Association before the succeeding Legislature and to submit its recommendations if any.

The duties thus imposed upon the executive officers would not be onerous. By the selection of members in active legislative service, and with due rotation, service upon committees would not be made burdensome. With a time limit the discussions in open forum should not be tiresome and I am sure they should not interfere with our usual splendid but brief program. Of course special meetings could be had if the need and desire therefor developed.

Permit me then to summarize some of the advantages which would enure to the bar by such a constructive program.

The most direct advantage would be the practical education of the bar through the biennial review, which would keep the members informed of the changes in the State's law, and of the needs and of the dangers of proposed legis-

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lation; and would better prepare them for the performance of their civic duties.

Except for those members of the bar who happen to have been members of the Legislature, we, individually, know very little with respect to the laws passed, for some months after the Legislature has adjourned, and sometimes not until we are surprised and perhaps mortified to find the change in the session laws, published long after adjournment. Even then we know nothing of the proposed legislation which has failed and which should, in the next Legislature, have the advantage of our approval, or feel the force of our criticism or opposition.

We could not better prepare our members who have legislative ambitions for the effective performance of their duties than in an open forum of this Association under a prepared program upon such current questions mooted for the consideration of our Legislature as are of especial interest to the bar. We made a successful attempt to enlarge our program by addresses from among our own members in 1914. This was continued in 1915 with some excellent contributions from local talent. The discontinuance of this practice was due, not to lack of interest, but to a lack of a definite continuous program such as that now suggested.

Another advantage of the proposed plan is that, by it, through the medium of the clearing house committee, we can capitalize the daily experience of attorneys.

During the course of a busy practice we not infrequently find some archaic, obscure, or misleading provision, or discover the entire lack of a remedy or the need of improvement in procedure. Although we may make a note of it at the time, yet for the want of a convenient method to bring the need to legislative attention, nothing constructive comes from our experience. The clearing house committee would give us an opportunity immediately to put our suggestions for needed improvements in the law into line for legislative consideration. During the last few sessions of the Legislature some important measures have been incorporated in

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our statute law upon suggestion of members of our Courts who have personally taken pains to press the matters upon the attention of lawyer members of the Legislature. The proposed committee would make it possible for the State to a larger extent to avail itself of such suggestions.

At most our statutory laws are but general rules designed to mete out justice to the greatest number. The injustice occasionally inflicted by those rules, however, gives rise to the thoughtless expressions we have so often heard that "there is no justice in the law." The stabilizing of the rules at the point of most exact justice will always be a problem which can be solved only by a concensus of the opinions of many men who are daily meeting the practical application of the rules,—in the office, in trial, and upon the bench. It has been well said that "law is a vital living changing thing which must keep pace with the changing ideals and morals of the community." The bar should be the best medium through which this ever changing public sentiment should find expression designed to culminate in legislative action.

Further advantage in the proposed plan lies in the fact that the influence of such a committee would tend materially to eliminate unnecessary and vicious legislation, as well as to improve the phraseology of our statute laws. The need of some guiding hand for legislation is apparent, when we consider that at the last session of the Legislature, we had in our House and Senate, 430 law-makers, each of whom was entitled to try his hand at proposing and drafting general laws; that over 1,000 such drafts were presented for the action of our General Court, of which some 650 were killed in committee, and many of the remaining 350 underwent material but insufficient modification before passing. Any one of us who has attempted to express himself accurately in the fewest words possible realizes what it means to allow any one of over 400 average citizens of New Hampshire without legal training to draft a general law. Too frequently the less experience a man has the less he doubts his own ability to express himself. Too often also proposed

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measures are but attempts to formulate in general law individual grievances without considering the effect of the act upon the rights of the people of the State as a whole.

Many of the members of the judiciary committees, and committees upon revision of the statutes, come to their task for the first time. It is too much to expect the lawyer members of these committees, in the busy days of the session, to analyze this mass of proposed legislation, to eliminate the vicious and unnecessary measures, to correlate the remaining measures with the existing statutory provisions, and to supervise the phraseology of the new laws.

I am indebted to one of the members of our Court for the citation of recent instances of the absurd results which come from our present system.

Section 1 of Chapter 70 of the Session Laws of 1919 provides that: "It shall be unlawful for a *man* to knowingly sell or exchange an animal which has aborted without first informing the party who receives such animal, *as referred to above.*"

The first rule of good draftsmanship is violated in that the body of the statute is not intelligible without reference to the title of the act. The title of the act reads "An Act in Relation to the Control and Suppression of Contagious and Infectious Diseases of *Domestic Animals.*" The author doubtless had the laudable purpose of protecting the purchaser of cattle but his act purports to include all domestic animals from the ordinary herds to poodle dogs and guinea-pigs. Just why the draftsman made it unlawful for "a man" to knowingly sell an animal predisposed to abortion and did not include in his inhibition women and corporations is not apparent. However, he took special pains in the second section not to let them escape the penalty, as he provided therein "that *any person*" who is guilty of violating the law shall be subject to the penalty.

Section 2 provides: "Any person found guilty of violating this law shall be subject to a minimum fine of $50 *and* a maximum of $100."

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Just why the author felt that the offense was such that a person should be subject to *both* a minimum and a maximum fine for the same offense is not explained.

While it may be hard to find another instance where a statute of six lines contains so many violations of good draftsmanship, and discloses such an entire lack of legal acumen, it is safe to say that the laws of every session do contain scores of inartificial and contradictory provisions which should never have found their way into our printed laws.

Mr. Root has well said, "There is a useless lawsuit in every useless word of a statute; and every loose sloppy phrase plays the part of a typhoid-carrier."

Nor are legislative errors confined to errors in draftsmanship. At the session of 1917, our Legislature proceeded by solemn enactment to amend a law which had been repealed four years before. (See Chapter 353, Laws of 1917, and Chapter 427, Laws of 1913.)

I do not expect that this Association, through this proposed committee, can eliminate from our legislation all of the mistakes and inconsistencies which occur at our biennial sessions. The program would be but a step in the right direction. The ultimate solution of the difficulty doubtless lies in the creation of the office of a legislative draftsman, or the establishment of a legislative reference bureau at the State's expense, as has been suggested by some of our constructive thinkers. Draftsmanship of statute law is a science which requires not only a legal education, but a knowledge of social, political and economic questions, as well as an analytical mind and long experience. In fact such legislative supervision by a permanent state official should be one of the early products of the active interest of the bar in state legislation.

The creation of the office of legislative draftsman would not, however, eliminate the desirability of the continued co-operation of the bar by means of some such system as that which I am suggesting. While the legislative drafts-

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man may be essential to the improvement of the form, and to the avoidance of inconsistencies, the legislative committee of the Bar Association would always be of great importance in helping to control the substance of our statute law. I think I am not assuming too much when I say that any good measure's chances of passing the General Court would be materially aided if it could be asserted on the floor of the House and Senate that the proposed law after careful discussion had the approval of the Bar Association of our State; and that a vicious provision would be far less likely to pass muster in either body if it could be made known that the provision had had, after a like discussion, the disapproval of the bar. I am now speaking more particularly of proposed legislation, where the subject matter is more peculiarly within the knowledge and experience of the profession, and in respect to which the members of the bar find themselves in substantial accord.

Another advantage of the proposed plan is that the clearing house committee would afford to the judiciary a means of presenting for legislative action, questions of a quasi-personal character, without danger of misconstruction of motives.

It should be a matter of concern to the bar that our Superior Court has not a sufficient membership to permit the judges to accomplish their work within reasonable hours, and to take that reasonable relaxation to which mental workers past the meridian of life are entitled. I recently learned in casual conversation with one member of our Superior Court that in a single year, he sat at the trial of fifty-seven jury cases, eighty-three court cases and one-hundred forty-three divorce cases, some of which were contested, all this in addition to the usual work incident to naturalization, hearing of motions, and attention to indictments, as well as the drafting of a score or more of reserved cases for the Supreme Court. Some of our judges spend many of their holidays and evenings at their desks. They are too modest to boast of their work and too patient to complain of the

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hardship, but it should not be a matter of indifference to the bar that our trial Court is overworked, with no adequate provision for relief in case of illness or other emergency. It is simply our good fortune that we have not had a recurrence of the situation which existed a few years since, when by reason of illness the burden of the work of the whole Court was, for a long period, thrown upon two or three members. In the ordinary cycle of events this may reasonably be expected to recur. It is in the interest of the bar, as it is in the interest of justice, that litigants have their cases seasonably heard, that findings of the Court should be filed promptly and that questions of law should be in transit to the Supreme Court for as short a period as possible. It is too much to expect this result, without hardship to our justices, if we ask five men to do six men's work.

While discussing quasi-personal questions of the judiciary, I would not do complete justice if I did not refer to the matter of the compensation of our judges, the inadequacy of which is emphasized in these days when the average man is earning double and in some cases treble the wages he was earning when these salaries were fixed. The appropriate method of meeting this injustice is through the representatives of the bar who can, without any indelicacy, consider and present the necessity for legislative action.

The advantage to the bar of better facilities for the practice of law, with consequent advantage to clients, would be another almost certain result of the proposed plan. I feel sure that if we had had such a program we would not have allowed thirty years to pass without an authorized revision of the statutory laws of our State, and the bar would not still be groping through the maze of undigested decisions of our Court for a still longer period. The much mooted question of improvement in the method of selecting jurors, which was ably handled in an address delivered at our annual meeting of 1914, might well have had further consideration and possibly a solution, if it had been submitted to discussion in open forum in the course of a regular and

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definite program of the Association, and to the care of a committee charged with the duty of making recommendations to the Legislature.

The Bar Association idea evidently has not the grip on lawyers in New Hampshire that it has elsewhere. Only six members of the New Hampshire Bar registered at the annual meeting of the American Bar Association in Boston last September. Notwithstanding the meeting was at our door there was an equal or better attendance from Texas, Oklahoma, Utah and other distant states. There were so many splendid discussions by able thinkers upon such a variety of subjects that there was no difficulty at any session in finding some topic of especial interest which could be enjoyed and digested by the most dyspeptic mind.

A larger participation and interest in the State Association would inevitably develop a larger interest in the National Association, which is yearly becoming of greater importance as a factor in taking the national pulse and shaping state and national legislation. With the growth of industrial enterprises until a single business may cover many states, with the annihilation of distance through new means of transportation and communication, states, cities, and communities have been drawn together. There is less and less excuse, and greater and greater inconvenience and danger in the lack of uniformity in our laws. With forty-eight legislative grist-mills running, and as many Supreme Courts sifting the product which they turn out, there is ever greater need of united action on the part of the bar of the country to secure the greatest uniformity consistent with the varying needs of the different sections. With this in mind, the American Bar Association is constantly making recommendations to the legislatures of the individual states. Not all of the measures which receive its approval are consonant with our ideas nor adapted to our jurisdiction. The examination of these recommendations and their adoption or rejection is logically the work of the State Bar Association. It cannot safely be left to 430 farmers, merchants,

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manufacturers and workmen, with only a sprinkling of legal minds.

When in our Constitution it was stated that it is one of the purposes of our Association to "*restore* and maintain the confidence of the community in the profession" and "in their patriotic devotion, as a class, to the cause of good government and the general welfare of the state," it was recognized that there has been a decline in the ideals of our profession, particularly with respect to its governmental activities. Although there is to-day no single profession which contributes so many men to the legislative and executive branches of our national and state governments as does the legal profession, nevertheless this proportion is smaller than in the days of Jefferson and Madison, or of Webster and Calhoun, and particularly so in our own State, because of the size of our lower house. This very fact makes it the more important that the bar of the State take a greater interest in the initiation and guidance of legislation in New Hampshire.

It has been well said that "the highest conception of the professional duty of the lawyer requires him to contribute to the thought of the country upon questions of public policy . . . because of his training and experience." The profession has a duty to think—to have opinions and to express them. A legislative review and a topical program at our Bar Association meeting, would afford an excellent means of awakening interest and thought; an open forum should provide opportunity for formulating opinions; a well informed committee would furnish the best means for giving those thoughts and opinions legislative expression.

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ANNUAL ADDRESS.

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GEORGE W. WICKERSHAM.

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ANNUAL ADDRESS.

BY HONORABLE GEORGE W. WICKERSHAM, OF NEW YORK CITY.

Few measures of recent legislative enactment have attracted so much public attention, as that by which the State of Kansas attempted to grapple with the strike of coal miners during the winter of 1919–1920, and which recently was publicly debated in New York between the Governor (Allen) of that State and Samuel Gompers, President of the American Federation of Labor.

Before attempting an analysis or description of the act, in order fully to comprehend its provisions and their implications, we must consider the constitutional basis upon which the measure rests, as expounded in a series of decisions of the Supreme Court of the United States, dealing with cases of apparent conflict between provisions of the Bill of Rights, embodied in the Fifth and Fourteenth Amendments to the Federal Constitution, and the asserted police power of the State,—

"by which persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the State."[1]

In the year 1876, the Supreme Court of the United States, in the case of *Munn* v. *Illinois*,[2] rendered one of those decisions which constitute landmarks in the development of American constitutional law. The controversy arose out of certain provisions of the Constitution of Illinois, adopted in 1870, and legislation enacted in pursuance thereof, which declared all elevators or storehouses where grain or other

[1] Per Redfield, C. J., *in Thorp* v. *R. R. Co.*, 27 Vt. 149, 150.
[2] 94 U. S. 113.

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property was stored for a compensation, whether kept separate or not, to be public warehouses; required their owners or managers to make and file weekly statements under oath with designated officials, with the right to the owners of the property on storage to examine the books and records; regulated the manner of keeping weights and measures; required the owners or managers before transacting any business to secure a license by conforming with statutory provisions; fixed the maximum rates which might be charged for any storage and required the publication of schedules of such rates. The validity of these provisions was contested as violating the provisions of the Fourteenth Amendment to the Constitution of the United States, as well as being an invasion of the exclusive control over interstate commerce granted to the Congress by the Constitution. The main question involved was whether or not they deprived the owners and managers of such warehouses of their property without due process of law. The constitutionality of the enactments was upheld by a majority of the Supreme Court in an opinion written by Chief Justice Waite. It sustained the validity of the Constitution and statutes attacked, as a proper exercise of the police power of the State. This power was alleged to be founded upon the social compact,

"by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good."

While it was said that this does not confer power upon the whole people to control rights which are purely and exclusively private, it does authorize the establishment of laws requiring each citizen so to conduct himself, and so to use his own property, as not unnecessarily to injure another. This was declared to be the very essence of government, and that from this source come the police powers, which, as was said by Chief Justice Taney in the License Cases,[1]

[1] 5 How. 583.

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"are nothing more or less than the powers of government inherent in every sovereignty, . . . that is to say, . . . the power to govern men and things."

In the exercise of these powers, it was pointed out,—

"it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day, statutes are to be found in many of the States upon some or all of these subjects; and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the Fifth Amendment in force, Congress, in 1820, conferred power upon the City of Washington 'to regulate . . . the rates of wharfage at private wharves, . . . the sweeping of chimneys, and to fix the rates of fees therefor, . . . and the weight and quality of bread,' . . . ; and, in 1848, 'to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers.'"

"From this," the court said, "it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property, necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the States from doing that which will operate as such a deprivation."—(p. 125.)

Considering the principles upon which this power of regulation rests, the court turned to the common law, "from whence came the right which the Constitution protects," finding there that when private property is "affected by the public interest, it ceases to be *juris privati* only." Citing from Lord Chief Justice Hale's declarations made two hundred years before, the court laid down the governing principles in a paragraph since frequently quoted as established law:

"Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the

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public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."—(p. 126.)

The application and development of these principles in both England and America was reviewed. The regulation of the weight and price of bread in Alabama, the licensing and regulating of the rates of innkeepers, of mills, ferries, bridges, turnpike roads, and other kindred subjects, was adverted to, and particularly the regulation of the price of the carriage of goods by common carriers, who, having duties to perform in which the public is interested, such business is "*affected with the public interest*," within the meaning of Lord Hale's doctrine, and, therefore, subject to governmental regulation. Reviewing the character of the business carried on by the warehousemen, the court said that under the circumstances of such business,

"it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office,'"

these warehousemen did not.

"They stand, to use again the language of their counsel, in the very 'gateway of commerce,' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' . . . Certainly, if any business can be clothed 'with a public interest, and cease to be *juris privati* only,' this has been."—(pp. 131–2.)

The court further said:

"It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress."—(p. 133.)

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Having thus established the major premise, the court proceeded to assert that the power of regulation in the public interest embraced the establishment of maximum charges as one of the means of regulation.

"In fact," it said, "the common law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms, or forego the use."—(p. 134.)

Mr. Justice Field (with whom Strong, J., concurred) wrote a vigorous dissent. The question, as he viewed it, was one of the greatest importance,—whether it was within the

"competency of a State to fix the compensation which an individual may receive for the use of his own property in his private business, and for his services in connection with it."—(p. 138.)

The declaration of the Illinois Constitution that private buildings used for private purposes should be deemed public institutions, he asserted, did not make them so.

"There is no magic in the language, though used by a constitutional convention, which can change a private business into a public one, or alter the character of the building in which the business is transacted. A tailor's or a shoemaker's shop would still retain its private character, even though the assembled wisdom of the State should declare, by organic act or legislative ordinance, that such a place was a public workshop, and that the workmen were public tailors or public shoemakers. One might as well attempt to change the nature of colors, by giving them a new designation. The defendants were no more public warehousemen, as justly observed by counsel, than the merchant who sells his merchandise to the public is a public merchant, or the blacksmith who shoes horses for the public is a public blacksmith; and it was a strange notion that by calling them so, they would be brought under legislative control."—(p. 138.)

"When Sir Matthew Hale, and the sages of the law in his day, spoke of property as affected by a public interest," said Justice Field, "and ceasing from that cause to be *juris privati* solely, that is, ceasing to be held merely in private right, they referred to property dedicated by the owner to public uses, or to property the use of which was granted by the government, or in connection with which special privileges were conferred."

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"Unless the property was thus dedicated," he continued, "or some right bestowed by the government was held with the property, either by specific grant or by prescription of so long a time as to imply a grant originally, the property was not affected by any public interest so as to be taken out of the category of property held in private right. But it is not in any such sense that the terms 'clothing property with a public interest' are used in this case."—(pp. 139–140.)

Analyzing the character of the business conducted by the managers of grain warehouses, and referring to the argument in the majority opinion, Justice Field said:

"If this be sound law, if there be no protection, either in the principles upon which our republican government is founded, or in the prohibitions of the Constitution against such invasion of private rights, all property and all business in the State are held at the mercy of a majority of its Legislature. The public has no greater interest in the use of buildings for the storage of grain than it has in the use of buildings for the residences of families, nor, indeed, anything like so great an interest; and, according to the doctrine announced, the Legislature may fix the rent of all tenements used for residences, without reference to the cost of their erection. If the owner does not like the rates prescribed, he may cease renting his houses. He has granted to the public, says the court, an interest in the use of the buildings, and 'he may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control.' The public is interested in the manufacture of cotton, woollen, and silken fabrics, in the construction of machinery, in the printing and publication of books and periodicals, and in the making of utensils of every variety, useful and ornamental; indeed, there is hardly an enterprise or business engaging the attention and labor of any considerable portion of the community, in which the public has not an interest in the sense in which that term is used by the court in its opinion; and the doctrine which allows the legislature to interfere with and regulate the charges which the owners of property thus employed shall make for its use, that is the rates at which all these different kinds of business shall be carried on, has never before been asserted, so far as I am aware, by any judicial tribunal in the United States."—(pp. 140–141.)

Taking up the argument that the constitutional provisions and legislation under review fell within the police power of the State, a power not impaired by the Federal Constitution, Justice Field vigorously protested against the argument of the majority opinion, and said:

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"If the Legislature of a State, under pretence of providing for the public good, or for any other reason, can determine, against the consent of the owner, the uses to which private property shall be devoted, or the prices which the owner shall receive for its uses, it can deprive him of the property as completely as by a special act for its confiscation or destruction."—(p. 142.)

He added:

"One may go, in like manner, through the whole round of regulations authorized by legislation, State or municipal, under what is termed the police power, and in no instance will he find that the compensation of the owner for the use of his property has any influence in establishing them. It is only where some right or privilege is conferred by the government or municipality upon the owner, which he can use in connection with his property, or by means of which the use of his property is rendered more valuable to him, or he thereby enjoys an advantage over others that the compensation to be received by him becomes a legitimate matter of regulation. Submission to the regulation of compensation in such cases is an implied condition of the grant, and the State, in exercising its power of prescribing the compensation, only determines the conditions upon which its concession shall be enjoyed. When the privilege ends, the power of regulation ceases."—(pp. 146–147.)

I have quoted at some length from the prevailing and dissenting opinions in this great case, because the cleavage between the two principles of legislative control in the face of the Fourteenth Amendment was there clearly expressed by able and distinguished judges. The protest of Justice Field passed unheeded. The permissible scope of legislative control over business, through the exercise of the so-called police power of the States, under the *Munn Case* and subsequent decisions, has so grown, expanded and reached out, as to embrace an increasing range of subjects, until the supposed protection of private property from legislative impairment or destruction, through the Fifth and the Fourteenth Amendments to the Federal Constitution, has become almost, if not wholly illusory.

A separate essay might be written upon the widening scope of the police power as conceded by modern decisions of the Supreme Court. This power has been declared to be

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"the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government."[1]

The right to exercise it is said to be a continuing one, which cannot be contracted away.[2]

"It may be said in a general way that the police power extends to all the great public needs. . . . It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."[3]

Yet, it is also declared that even the police power cannot sustain as against the protection given by the Fourteenth Amendment what clearly appears to be

"not a fair and reasonable exertion of the governmental power but so extravagant or arbitrary as to constitute an abuse of power."[4]

Again, it is said that the validity of the police regulation,

"whether established directly by the State, or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable, and whether really designed to accomplish a legitimate public purpose."[5]

Under the scope given to this power by modern decisions, an almost unlimited discretion is conceded to the legislature to enact laws to meet the popular demand for legislative nostrums for economic ills, until it must be a clear case of arbitrary confiscation of private property or wanton invasion of personal liberty, to no demonstrable public advantage, which will cause the judicial power to condemn it under the constitutional prohibitions against legislative confiscation. The growth of this doctrine in its application to business quickly followed upon the decision in the *Munn*

[1] *Eubank* v. *Richmond*, 226 U. S. 137, 142.
Sligh v. *Kirkwood*, 237 U. S. 52, 59.
Cusack v. *Chicago*, 242 U. S. 526.
Dominion Hotel Co. v. *Arizona*, 249 U. S. 265.
[2] *Northern Pacific R. R. Co.* v. *Duluth*, 208 U. S. 583.
[3] Per Holmes, J., in *Noble State Bank* v. *Haskell*, 219 U. S. 104, 111.
[4] *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237.
[5] *Railroad Co.* v. *Drainage Commissioners*, 200 U. S. 561, 592.

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Case, although every step was hotly contested by eminent and learned judges.

In 1891–1892, the principles asserted in the *Munn Case* were reconsidered in *Budd* v. *New York*,[1] a case which involved the constitutionality of an act of the Legislature of New York fixing a maximum charge for elevating, receiving, weighing and discharging grain between elevators and lake vessels, or propellers, ocean vessels, steamships and canal boats. Mr. Justice Blatchford, writing for a majority of the court, substantially adopted Chief Justice Waite's reasoning in *Munn* v. *Illinois*. Again, there was a vigorous dissent, in an opinion written by Mr. Justice Brewer (concurred in by Justices Field and Brown). The vice of the doctrine established by the majority opinion was stated to be

"that it places a public interest in the use of property upon the same basis as a public use of property."—(p. 549.)

"Property," Justice Brewer declared, "is devoted to a public use when, and only when, the use is one which the public in its organized capacity, to-wit, the State, has a right to create and maintain, and, therefore, one which all the public have a right to demand and share in. The use is public, because the public may create it, and the individual creating it is doing thereby and *pro tanto* the work of the State. The creation of all highways is a public duty. Railroads are highways. The State may build them. If an individual does that work, he is *pro tanto* doing the work of the State. He devotes his property to a public use. The State doing the work fixes the price for the use. It does not lose the right to fix the price, because an individual voluntarily undertakes to do the work. But this public use is very different from a public interest in the use. There is scarcely any property in whose use the public has no interest. No man liveth unto himself alone, and no man's property is beyond the touch of another's welfare. Everything, the manner and extent of whose use affects the well-being of others, is property in whose use the public has an interest. Take, for instance, the only store in a little village. All the public of that village are interested in it; interested in the quantity and quality of the goods on its shelves, and their prices, in the time at which it opens and closes, and, generally, in the way in which it is managed; in short, interested in the use. Does it follow that that village public has a right to control these matters?

[1] 143 U. S. 517.

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That which is true of the single small store in the village, is also true of the largest mercantile establishment in the great city. The magnitude of the business does not change the principle."—(pp. 549–550.)

Then, with prophetic apprehension, the learned Justice continued:

"Surely the matters in which the public has the most interest, are the supplies of food and clothing; yet can it be that by reason of this interest the State may fix the price at which the butcher must sell his meat, or the vendor of boots and shoes his goods? Men are endowed by their Creator with certain unalienable rights, 'life, liberty and the pursuit of happiness'; and to 'secure,' not grant or create, these rights governments are instituted. That property which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if he devotes it to a public use, he gives to the public a right to control that use; and, third, that whenever the public needs require, the public may take it upon payment of due compensation."—(p. 550.)

But vigorous as this dissent was, it did not prevail; the argument of convenience and the modern doctrine of granting to the police power the widest possible expression and scope prevailed, and the very illustrations which were employed to demonstrate the absurdity of the doctrine have been cited to authorize the legislative exercise of the power. Once it be conceded that a general public interest in and given industry justifies legislative regulation of such industry, only public sentiment can restrain legislative activity in interfering with the conduct of the industry.

The next great step in the process towards the development and assertion of legislative power over private business was taken in the case of *German Alliance Insurance Co.* v. *Kansas* (233 U. S. 389), in 1914. The Legislature of the State of Kansas had passed an act regulating the business of fire insurance; requiring rates to be published, and not varied from by rebate or otherwise; prohibiting the fixing or charging of any rate which was not published, or which was excessively or unreasonably high, or not adequate to the safety or soundness of the company, such

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facts to be determined by the Superintendent of Insurance, with a right to review by the District Court. The constitutionality of this act was upheld by a majority of the Supreme Court, Mr. Justice McKenna writing the opinion. The basic contention against the law, as stated by him, was,

"that the business of insurance is a natural right, receiving no privilege from the State, is voluntarily entered into, cannot be compelled nor can any of its exercises be compelled; that it concerns personal contracts of indemnity against certain contingencies merely. Whether such contracts shall be made at all, it is contended, is a matter of private negotiation and agreement, and necessarily there must be freedom in fixing their terms. And 'where the right to demand and receive service does not exist in the public, the correlative right of regulation as to rates and charges does not exist.'"—(p. 405.)

This contention was brushed aside, the only question regarded as deserving of consideration by the court being, whether the business of insurance is

"so far affected with the public interest as to justify legislative regulation of its rates."

By this, the learned Justice stated, he meant

"a broad and definite public interest. In some degree the public interest is concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence, which makes the public interest that justifies regulatory legislation."—(p. 406.)

This, the learned Justice said, could best be explained by examples. The transportation of property—business of common carriers—is obviously of public concern, and its regulation is an accepted governmental power. The transmission of intelligence is of cognate character. There are other utilities which are denominated public, such as the furnishing of water and light, including in the latter gas and electricity.

"We do not hesitate," he said, "at their regulation nor at the fixing of the prices which may be charged for their service. The basis of the ready concession of the power of regulation is the public interest."—(p. 407.)

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Considering then, whether or not the same principle applied to the fixing of rates by an insurance company, he rejected the argument that the power of regulation can only apply to personal property, not to personal contracts. Referring to the decision in *Munn* v. *Illinois*, where, while the principle was expressed as to property, and the instance of its application was as to property, it was manifestly broader than that interest, he said:

"It is the business that is the fundamental thing; property is but its instrument, the means of rendering the service which has become of public interest."—(p. 408.)

Justice McKenna referred to the vigorous dissenting opinion of Mr. Justice Brewer in the *Budd Case*, saying of it:

"Every consideration was adduced, based on the private character of the business regulated and, for that reason, its constitutional immunity from regulation, with all the power of argument and illustration of which that great judge was a master. The considerations urged did not prevail. Against them the court opposed the ever-existing police power in government and its necessary exercise for the public good and declared its entire accommodation to the limitations of the Constitution. The court was not deterred by the charge (repeated in the case at bar) that its decision had the sweeping and dangerous comprehension of subjecting to legislative regulation all of the business and affairs of life and the prices of all commodities. Whether we may apprehend such result by extending the principle of the cases to fire insurance we shall presently consider."—(pp. 409–410.)

He read the decisions in the *Munn* and *Budd Cases*, and those which followed them, as demonstrating

"that a business, by circumstances and its nature, may rise from private to be of public concern and be subject, in consequence, to governmental regulation."—(p. 441.)

That, as was said by Judge Andrews in *People* v. *Budd*, 177 N. Y. 1, 27:

"the underlying principle is that business of certain kinds holds such a peculiar relation to the public interests that there is superinduced upon it the right of public regulation."

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After a review of the history and nature of fire insurance, he concluded that that business had become such a matter of public concern as to bring it within the scope of those businesses which were so affected with the public interest as to justify the exercise of legislative control, including the fixing of rates which might be charged. Contracts of insurance, he declared,

"have greater public consequence than contracts between individuals to do or not to do a particular thing whose effect stops with the individuals,"

and, he added:

"when the effect goes beyond that there are many examples of regulation."—(p. 413.)

Mr. Justice Lamar (with whom Chief Justice White and Justice Van Devanter concurred) wrote a dissenting opinion no less vigorous than that of Justice Field in the *Munn Case* or of Justice Brewer in the *Budd Case.*

"The fixing of the price for the use of private property," he said, "is as much a taking as though the fee itself had been condemned for a lump sum—that taking, whether by fixing rates for the use or by paying a lump sum for the fee, has always heretofore been thought to be permissible only when it was for a public use. But the court in this case holds that there is no distinction between the power to take for public use and the power to regulate the exercise of private rights for the public good. That is the fundamental proposition on which the case must stand, and the decision must therefore be considered in the light of that ruling and of the results which must necessarily flow from the future application of that principle. For if the power to regulate, in the interest of the public, comprehends what is intended in the power to take property for public use, it must inevitably follow that the price to be paid for any service or the use of any property can be regulated by the General Assembly."—(p. 419.)

Analyzing the business of insurance as defined in cited cases, he said:

"The fact, that insurance is a strictly private and a personal contract of indemnity puts it on the extreme outside limit and removes it as far as any business can be from those that are in their nature public. So that if the price of a private and personal contract of indemnity can be regulated,—if the price of a chose in action can be fixed,—then the

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price of everything within the circle of business transactions can be regulated."—(p. 420.)

He quoted Judge Cooley as saying that although the practice of fixing prices may have prevailed in some of the colonies up to the time of independence, since independence

"it has been commonly supposed that a general power in the State to regulate prices was inconsistent with constitutional liberty."—(*Cooley's Constitutional Law*, 7th Ed., 807.)

Reviewing various rate-regulated occupations in the United States, he said:

"It is to be noted that in each instance the power to regulate rates is exercised against a business which in every case used tangible property devoted to a public use."—(p. 426.)

Public *interest* and public *use*, he pointed out, are not synonymous.

"'Property is devoted to a public use when, and only when, . . . all the public has a right to demand and share in it' . . . In a broad sense it is the right in the public to an actual use, and not to an incidental benefit."—(Quoting from *Howard* v. *Schwartz*, 77 Kansas, 599.)

Finally, he summed up his contentions in the following language;

"The elements which are said to show that insurance is affected with a public interest do not arise out of the size of any one company, but out of the volume of the aggregate business of all the companies doing business within the State and beyond its borders. If that test be applied, and if the sum of the units is to determine whether or not a business is affected with a public interest (which is said to be the equivalent of a public use), then if the principle of the decision be applied to the business of farming all can see to what end it leads. In view of the amount of property employed and the aggregate number of persons engaged in agriculture and the public's absolute dependence upon that pursuit, it would follow that, farming being affected with a broad and definite public interest, the price of wheat and corn; cotton and wools; beef, pork, mutton and poultry; fruit and vegetables, could be fixed. Or if we take the aggregate of those who labor and consider the public's absolute dependence upon labor, it would inevitably follow that it, too, was affected with a broad and definite public interest and that wages

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in the United States of America in this Twentieth Century could be fixed by law, just as in England between the 14th and 18th centuries. And inasmuch as the prices of agricultural products are dependent on the price of land and labor, and as the price of labor is closely related to the cost of rent and food and clothes and the comforts of life, there would be the power to take the further step and regulate the cost of everything which enters into the cost of living. . . . There seems no escape from the conclusion that the asserted power to fix the price to be paid by one private person to another private person or private corporation for a private contract of indemnity, or for his product, or his labor, or for his private contracts of any sort, will become the center of a circle of price-making legislation that, in its application, will destroy the right of private property and break down the barriers which the Constitution has thrown around the citizen to protect him in his right of property—which includes his right of contract to make property, his right to fix the price at which his property shall be used by another. By virtue of the liberty which is guaranteed by the Constitution, he also has the right to name the wage for his labor and to fix the terms of contracts of indemnity,—whether they be contracts of endorsement or suretyship, or contracts of indemnity against loss by fire, flood, or accident."—(pp. 429–431.)

What Justice Lamar intended to be a *reductio ad absurdum*, of the argument of the majority of the court in the *Insurance Case*, in the six years since that decision, has been adopted as at once a definition of the correct scope and meaning of the police power in its relation to State regulation of business and industry, and an invitation for its exercise.

The control of business activities exercised by the Federal Government during the war, under the almost unlimited war powers of the legislative and executive branches of government, more or less has accustomed people to governmental supervision, restraint and direction. The assertion by the State legislatures of similar control, since the close of hostilities, therefore, has met with less opposition than naturally would have been the case without such preparation.

The most striking example of this type of legislation is that furnished by the Kansas "Industrial Court Law," passed by the Legislature of that State in January of the

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present year. It was provoked by a nation-wide strike of bitumunous coal mine-workers during the winter of 1919–1920, which produced a suspension of the industry of producing fuel during an exceptionally severe winter, characterized by Governor Allen, in his message to the Legislature, as

"a most daring attempt to override government and make the public the helpless victim of a fuel famine."

This strike threatened the welfare, even the lives, of the citizens of the State. On the application of the governor, the Supreme Court appointed receivers of the mines, to operate them in the public interest, and the executive government secured volunteer miners, furnished them with protection, and proceeded to mine and furnish coal to the public. This action apparently was justified upon the ancient maxim *salus rei publicae suprema lex*. A bill was thereupon introduced in the Legislature designed to prevent a recurrence of such a menace to the public welfare. It proposed to prohibit the suspension of the coal mining industry by concerted action of either employees or employers, through the establishment of a tribunal for the investigation and determination of disputes between them. To quote the governor,

"It says to the miners, not 'You shall not quit work,' but 'You shall not conspire for the purpose of closing down the operation of this industry whose product is necessary to the welfare of the people.'"[1]

While the immediate object in view was to insure a supply of coal, the occasion also was utilized to reach out the hand of government to embrace in their entirety the industries producing and furnishing to the public food and clothing.

"The doctrine that certain industries and occupations are impressed or affected with a public interest," said the governor, in his message to the Legislature, "and therefore subject to regulation by the State, is an old one. We have legal enactment which provides for public regulation of railroads and public utilities generally. By means of this regulation,

[1]Debate with Samuel Compers, *New York Times*, May 29, 1920.

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the people are assured continuous service by the owners of such utilities. No such legal enactments exist with reference to the great corporations manufacturing food products or producing fuel. It has been recently demonstrated beyond peradventure of a doubt that the public may be made to suffer more acutely by the suspension of production of these necessities than by cessation of the service of transportation companies and other public utilities."

The legislation thus recommended and enacted applies to great and small industries alike. The aggregate import of the industry collectively to the public is made the test. The statute boldly adopts the principles asserted in the majority opinions in the *Munn Case*, the *Budd Case* and the *Insurance Case*. It proceeds on the lines which the learned judges who dissented from those decisions predicted would be the inevitable result of the doctrines they established. Public *interest* and public *use* are treated as synonymous, and a principle of legislative control of private industry asserted which constitutes the longest step towards State socialism ever taken by an American commonwealth, —not even excepting the North Dakota state business enterprises recently decided by the Supreme Court of the United States to be not contrary to the Federal Constitution.[1]

The public control asserted by this act is based upon the legislative declaration that the following described industries

"are determined and declared to be affected with a public interest and therefore subject to supervision by the State . . . for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this State and in the promotion of the general welfare."

The industries thus enumerated are the following, viz.:

(1) The manufacture or preparation of food products, whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings;

[1] *Green* v. *Frazier*, decided June 1, 1920.

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(2) The manufacture of clothing and all manner of wearing apparel in common use by the people, whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel;

(3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes;

(4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacturing or consumption;

(5) All public utilities and all common carriers as defined by the statutes of Kansas.

Every person, firm or corporation engaged in any such industry or employment, within the State of Kansas, either in the capacity of owner, officer or worker, is declared to be subject to the provisions of the act.—(Section 3.)

The act declares that it is

"necessary for the public peace, health and general welfare of the people of this State that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this State may live in peace and security, and be supplied with the neeessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, wilfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act."—(Sec. 6.)

To secure those ends, the statute creates a tribunal to be known as the Court of Industrial Relations, composed of judges appointed for terms of three years each.—(Sec. 1.)

In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of the designated employments, if it shall appear to

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that court that the controversy may endanger the continuity or efficiency of the service of any of such industries, or affect the production or transportation of the necessaries of life affected or produced by such industries or employments, or produce industrial strife, disorder, or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace, or threaten the public health, full jurisdiction, power and authority are granted to the Court of Industrial Relations, on its own initiative, to summon all necessary parties before it, and to investigate the facts, make such temporary findings and orders as may be necessary to preserve the public peace and welfare, and to preserve and protect the status of the parties, property and public interest involved, pending such investigations; to take evidence and investigate conditions; consider wages, returns accruing to capital, the rights and welfare of the public, and all other matters affecting the conduct of such industries and employments, and to settle and adjust all such controversies by such findings and orders as provided in the act. Whenever complaint is made by ten citizen taxpayers of the community of any such controversy, it is made the duty of the court to investigate, and if the parties are unable to agree, and the controversy may endanger the continuity or efficiency of service of such industry or employment, to determine the same.—(Sec. 7.)

The Court of Industrial Relations is further empowered to order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, public utility, or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in the act; provided, all such terms, conditions and wages shall be just and reasonable, and such as to enable such industries and employments to continue with reasonable efficiency to produce or transport their products

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or continue their operations, and thus promote the general welfare.—(Sec. 8.)

Section 9 of the act declares that it is necessary

"for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities, or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof."

The right of every person to make his own choice of employment, and to make and carry out fair, just and reasonable contracts and agreements of employment is declared to be recognized.

"If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable,"

the Court of Industrial Relations is empowered, by proper order, to modify the terms and conditions so that they shall be and remain fair, just and reasonable.

By Section 14, any union or association of workers engaged in the operation of such industries or employments, which shall incorporate under the laws of the State, shall be considered and recognized by the Court of Industrial Relations as a legal entity, and may appear before it, through its proper officers, attorneys or representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members, is thereby recognized, provided, that the individual members of such unincorporated unions or associations who shall desire to avail themselves of the right to collectively bargain, must appoint in writing some officer or officers of such union, or some other person or persons, as their agents or trustees, with authority to enter into such collective bargains, and to represent each of said individuals in matters relating thereto.

The act further declares it to be unlawful for any person, firm or corporation to discharge any employee, or to dis-

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criminate in any way against any employee, because of the fact that he may testify as a witness before the court, or sign any complaint, or be instrumental in bringing any matter or controversy to the attention of the court. It also is made unlawful

"for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any such person or persons, or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or persons, or corporation, shall have invoked the jurisdiction of said court in any matter provided for herein."—(Sec. 15.)

Section 16 makes it unlawful for any person, firm or corporation engaged in the operation of any such industry or employment, wilfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding the provisions of the act, unless previously permitted by order of the Court of Industrial Relations so to do.

It is made unlawful by Section 17 for any person, firm or corporation, or association of persons, to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of the act, or to conspire with others to do or perform any forbidden act, or to fail to do or perform any act or duty enjoined by the provisions of the act, *provided*, that nothing in the act shall be construed

"as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as 'picketing,' or to intimidate by threats, abuse, or in any other manner, any person or

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persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act."

Section 20 provides that in case of the suspension, limitation or cessation of the operation of any of the industries or employments affected by the act, contrary to its provisions, or to the orders of the court,

"if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this State, to take over, control, direct and operate said industry, employment, public utility, or common carrier during such emergency: provided, that a fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section."

In all such industries and employments in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, Section 16 empowers the Court of Industrial Relations, upon application and after notice to all interested parties and investigation, to make orders

"fixing rules, regulations and practices to govern the operation of such industries, employments, utilities or common carriers, for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers."

In case of the failure or refusal of either party to a controversy of the nature defined in the act, to obey and be governed by the order of the Court of Industrial Relations, that court is authorized to bring proper proceedings in the Supreme Court of the State of Kansas to compel compliance with the order; and in case any parties to a controversy feel aggrieved at any order made and entered by the Court of

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Industrial Relations, such parties may bring proper proceedings in the Supreme Court to compel the Court of Industrial Relations to enter a just, reasonable and lawful order in the premises. In such proceedings the Supreme Court may consider the evidence before the Industrial Relations Court, or may take additional evidence, as it shall deem proper.

Any order made by the Court of Industrial Relations as to a minimum wage or standard of wages, by Section 23 is made *prima facie* reasonable and just, and if said minimum wage, or standard of wages, shall be in excess of the rate theretofore paid in the industry, employment, utility or common carrier, then and in that event, the workers affected thereby shall be entitled to receive said minimum wage, or standard of wages, from the date of the service of the summons or publication of the notice instituting said investigation, and shall have the right individually, or in case of incorporated unions or associations, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and the minimum wage, or standard of wages, so found and determined by said court in such order. It is made the duty of all employers affected by the provisions of the act, during the pendency of any investigation brought under it, or any litigation resulting from it, to keep an accurate account of all wages paid to all workers interested in such investigation or proceeding; provided, that in case said order shall fix a wage or standard of wages lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event, the employers shall have the same right to recover in the same manner as provided with reference to the workers.

The fact that this legislation was enacted for the immediate purpose of enabling the State authorities to deal with a suspension of the industry of mining and furnishing the public with fuel, resulting from a strike of the coal miners,

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and that its application at once was directed towards thwarting the efforts of the miners' union to force large increases in wages and cost of mining, resulting in the enhancement of the price of coal to the public, has focussed public attention upon the measure as a means of controlling labor unions and protecting the public from the consequences of strikes. On the one hand, the law has been applauded by those who wish to see checked the growing dominance of union labor, and on the other hand, it has been denounced by the representatives of organized labor as a wilful and necessarily unsuccessful invasion of the right to labor for whom and under what conditions they choose.

Very little attention has been given to the possible application of the law to the control of prices and profits of industry and the very wide State control over industry which it asserts. Mr. Gompers, in his debate with Governor Allen at Carnegie Hall on May 28, attacked the measure upon the ground that any abridgment of the right of a man to quit work constitutes involuntary servitude which is forbidden by the United States Constitution. He declared that the right to strike had been the weapon used by the workers to bring about the betterment of their condition; that to deny that right is to compel them to labor against their wills which is involuntary servitude. He ignored the fact that the statute under discussion carefully preserves

"the right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment."

That while making it

"unlawful for any . . . individual employee, or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries"

specified in the act, it expressly declares that nothing contained therein shall be construed

"as restricting the right of any individual employee engaged in the operation of any such industry . . . to quit his employment at any time."

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Governor Allen maintained that the issue involved was not the right of any man to quit work, but the power of the unions to compel men to quit work against their wills; that the essence of the law was the prohibition against conspiring to close down the operation of an industry whose product is necessary to the welfare of the people. The governor put to Mr. Gompers this question, which went to the root of the matter under discussion:

"When a dispute between capital and labor brings on a strike affecting the production or distribution of the necessaries of life, thus threatening the public peace and impairing the public health, has the public any rights in such a controversy, or is it a private war between capital and labor?"

Mr. Gompers evaded this question at the time of the debate. His failure to meet it squarely, led to such unfavorable comment that some days later he sought to correct the impression thus made by contending that there is no public,—in the sense of a disinterested public: that all people necessarily fall within one of two classes,—wageworkers or capitalists. This was merely a continuance of his evasion of the real issue. Every industrial dispute, every threatened strike or lockout, involves three parties: the workers or employees, the employers, and the public,—who are not directly concerned in the controversy, but who suffer the inconvenience and loss caused by the suspension of the industry and who pay the bill of expense thereby occasioned in the higher prices which usually follow the ending of the dispute. It is this large class which has been made to suffer loss and inconvenience to a constantly increasing degree, which the Kansas law primarily seeks to protect.

But without conceding the soundness of Mr. Gompers' objections to the law, it may be questioned whether, purely as a matter of expediency, it is wise to attempt to prohibit strikes: whether coercion or persuasion is the best way to the avoidance of those clashes of interest which involve the public in so much loss and annoyance. The President's

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Industrial Conference, held in Washington in December, January and February last, provided for the adjustment of disputes by conference, conciliation, inquiry and arbitration. It proposed

"joint organization of management and employees as a means of preventing misunderstanding and of securing co-operative effort."

The conference frankly recognized the existence of conflicting interests between employers and employees. But, it maintained,

"there are wide areas of activity in which their interests coincide;"

and it declared it to be

"the part of statesmanship to organize identity of interest where it exists in order to reduce the area of conflict."

The conference recommended the establishment of a National Industrial Board and of Local Regional Conferences and Boards of Inquiry, these conferences and boards being made up of representatives of the parties to any industrial dispute, with an official chairman without vote. Representatives are to be selected by the employees with absolute freedom, by secret ballot. Where both parties voluntarily join in the request for inquiry, an unanimous finding of the board is to have the binding force of a trade agreement.

In the absence of agreement by the parties, the conference report is to be published,—in the belief that public sentiment will be created through an impartial statement of the facts, and that the coercive force of public sentiment will be more potent than any mandate of court can be. If the method recommended by the conference should prove inadequate to the protection of the public, a general impatience at the reckless disregard of its interests, so often displayed by both parties to industrial disputes, will compel the application of coercive methods. The law of criminal conspiracy is adequate to reach the leaders who direct, nay, sometimes compel a general suspension of an essential in-

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dustry, and pecuniary responsibility for damages on the part of all who take part in it,—such as was enforced under the Sherman Anti-Trust Law against the members of the Danbury (Conn.) Hatmakers Union,—will bring home to all involved a sense of responsibility for the attempt to coerce a concession to their demands through the inconvenience and damage occasioned to a disinterested public.

But the application of the law to the wageworkers should not blind us to a realization of the power over all productive industry involved in the enactment of this statute.

If the whole industry of the manufacture or preparation of food products may be enveloped in a public interest and regulated at will by the legislature, it need not stop, as does this act, with the process of converting the products of the soil from a natural state to a condition to be used for food, but it may reach back to the farmer, determine the conditions under which he shall labor and employ others to work for him, the prices he may charge for his crops, and the methods by which he may dispose of them. Indeed, there would seem to be no limit to the legislative discretion, and the individual no longer can say: "Shall I not do what I will with mine own?"

Because, as Aristotle says,

"all governments rest on the principle of self-preservation, and at times extreme measures must be allowed,"

which is the philosophy upon which rests the police power of the State, are there to be no limits upon the right of the Legislature to interfere with and control the conduct of every man's business, to regulate the cost of his product, and the price of his wares? If so, why are constitutions written, and bills of rights formulated? These are questions which naturally suggest themselves to lawyers, as they consider such statutes as the latest Kansas remedy for settling industrial disputes, and the judicial interpretation of the Constitution which would seem to sanction its enactment.

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IN MEMORIAM.

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JOHN T. BARTLETT.

BY HENRY A. SHUTE, OF EXETER.

John T. Bartlett, a member of the Rockingham Bar and in active practice of his profession at Raymond since his admission to the bar in August, 1885, died on the 18th day of May at Raymond, after an illness following a surgical operation at the Exeter Cottage Hospital.

He was born in Manchester on the 9th day of June, 1851, a son of John and Harriet (Marston) Bartlett. Upon the death of his father, he removed with the family to Nottingham, where he was obliged to take the man's part in the support of the family by doing farm work and by making shoes.

As he was industrious and frugal he managed to save from his wages a small amount of money with which, at the age of twenty-one, he entered Pinkerton Academy of Derry taking the full course and graduating in 1877. As the small funds he had saved were soon exhausted he was forced to earn his way by doing work on holidays, vacations and in his spare hours.

Following his graduation he taught school until 1884 in Deerfield, Nottingham, Derry and Raymond. As a teacher he was successful in that, while he was thorough and painstaking, he took a personal interest in his pupils and was always willing to explain difficult problems and to assist them in any way. He was exceedingly kind hearted, but no big boy ever attempted a second time to dispute his authority as master. The frame that had been developed and hardened by farm labor was good for any physical emergency that might arise.

But he longed to be a lawyer and out of school hours he worked hard at his law text-books and during his vacations

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he studied in the office of G. C. and G. K. Bartlett of Derry until his admission in August, 1885.

From September, 1885, to the date of his death he maintained an office in Raymond and during all these years was chief adviser of the citizens of the town and of the vicinity.

It is as a lawyer that we, members of the New Hampshire Bar, knew him, respected him and loved him. John, for as John he was known to us all, was fair and upright in his treatment of his clients, his defendents and of his brother lawyers. He never sought to win an advantage by unfair means. He seldom called to his aid the technicalities of the law, the use of which is legitimate, if bordering on sharp practice. He did not split hairs.

He had a legal mind and knew his books and reports. His preparation of his cases was painstaking and thorough. In the trial he was calm, imperturbable and deliberate to a degree. At times his opponents and the presiding justices would chafe under his slowly deliberate methods. But it made no difference to John. He was there to win his case by careful and deliberate methods. It was his right.

I remember one instance in which a certain judge, a man of a masterly power of assimilation, and an almost uncanny faculty of anticipating the trend of an examination in direct or in cross, tried to hurry our friend John.

"Proceed! proceed! Brother Bartlett," he said impatiently, "You are wasting valuable time."

John stopped, turned to the Court, gazed at him through his spectacles with the utmost benignity, bowed respectfully and said slowly and deliberately, "Yes, your honor, I will endeavor to hasten the examination of this witness with due diligence, and to be as brief as possible." Then he turned to the stenographer and said, "Will you kindly read your minutes of the question I was endeavoring to ask?"

The judge threw himself violently back in his chair and chewed tobacco with the utmost vehemence.

Afterwards, in discussing the matter with other members of the bar he said with a quiet laugh, "I've learned one

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thing, and that is that you cannot hurry Brother Bartlett. But I think on the whole, that he gets to the point with a few deliberate questions quite as quickly as some of your quick spoken men who ask so many rapid-fire questions that have no bearing on the case. His questions mean something."

His arguments, whether before Court, jury or referee were deliberate, logical and within the evidence and law of the case at hand. True, there were times when, fired by some injustice to his client, he would explode with the violence of a man slow to wrath.

I think John had one of the most clean and refined minds I have ever known. Always glad to see his friends and brother lawyers, and to talk of most matters with the utmost freedom, one instinctively felt that he was not the one to whom a shady story could be told.

He was twice married. First in 1869 at the age of eighteen he married Emma J. Durgin of Nottingham. She died after a few years leaving no children, and on November 30, 1882, he married Emma L. Tucker of Deerfield who has survived him. His children are Ada L.; Bessie B.; John T. Jr.; and Robert L. Bartlett. He was a most devoted and affectionate husband and father and lived to take the utmost pleasure and pride in the success of his children.

He was a Democrat and in his early days in demand as a logical and powerful speaker, but he never allowed his politics to interfere with his duties as a counsellor or an advocate.

He never sought office, but was for a few years Justice of one of the District Courts of Rockingham. He had been for many years a member of the I. O. O. F. He was an attendant at the Congregational Church.

Of his own idea of success John had but little to say. Success is but relative. I presume that every young lawyer dreams of an immense practice, culminating in elevation to the bench, or failing this, of becoming a state or interstate power in his profession. If our friend had these

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ambitions he never spoke of them. Few of us attain these ambitions.

But there are successes outside of wealth, power and office. For nearly forty years he was a trusted counsellor of a busy town and of a large community. To these duties he gave the best there was of his powers. He used his knowledge for the oppression or the undoing of no man. He kept the faith and the law, and he died with the respect and affection of all who knew him.

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COLONEL THOMAS COGSWELL.

BY E. P. THOMPSON, OF LACONIA.

Colonel Thomas Cogswell was born in Gilmanton, on February 8, 1841, his parents being Judge Thomas and Polly (Noyes) Cogswell and died February 15, 1904, in the house where he was born.

Judge Cogswell located in Gilmanton in 1820, coming there from Andover, Massachusetts, and was, until his death, perhaps the most prominent man in the old town of Gilmanton. He came from revolutionary stock, and was for many years a justice of the peace; for ten years an active deputy sheriff of Strafford County; was a captain in the old state militia; was a member of the governor's council; and was a judge of the first Court of Common Pleas when Belknap County was set off from Strafford County.

Colonel Cogswell was fully as prominent in public affairs in his native town as was his father. He was educated at Gilmanton Academy, then one of the leading educational institutions of the state and entered Dartmouth College in 1860. On his return from the war, he was given the degree of A. B. by the college, without having finished his course there, the college considering a year's military service equal to a year at studies in the regular course.

He enlisted September 15, 1862, in Company A, Fifteenth Regiment, as a private; was promoted to first lieutenant, November 3, 1862; and to captain, April 8, 1863. He was for a time detailed on the staff of General Neal Dow, but at his own request, was permitted to join his regiment. He was stationed in the Department of the Gulf, under General Banks and was with his company at the siege and surrender of Port Hudson.

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In 1863 he commenced the study of law with Colonel George W. Stevens and O. A. J. Vaughan in Laconia, and afterwards at Harvard Law School, and was admitted as an attorney-at-law, in the Supreme Court of New Hampshire in September, 1866. He commenced the practice of law at Gilmanton Iron Works in December, 1866, where he continued during the remainder of his life.

The varied activities of a busy life had made his range of acquaintance extensive and his death was regretted by an unusually wide circle of friends, whole-hearted, genial, companionable, he made friends wherever he was known.

As a lawyer he stood high in his profession and as an advocate he had few peers. He always fought for the right and would never undertake a case that he did not consider was based on honesty. As an officer of the Court he was always faithful to his duty, commanding the attention and respect of the Court. As a husband and father he was kind and indulgent, as a neighbor he was obliging and charitable, and as a townsman he was ever ready to aid and support everything that pertained to the interest of the old town he loved so well.

He married first Florence Mooers of Manchester, by whom he had three children, Anna C. Edgerly, Thomas Cogswell, Jr. and Clarence N. Cogswell. She died February, 1892. On October 6, 1902 he married Caroline Jones, daughter of Richard Jones of Gilmanton, who together with the three children survived him.

At the death of his father and mother he came into possession of one of the largest farms in Gilmanton where he always made his home, devoting considerable of his time to overseeing the labor necessary to cultivating the large fields and taking care of the stock. He was not averse to manual labor and often assisted his workmen when his other duties permitted.

It may not be out of place to record here, the historical fact that the first frame barn built, in the original town of Gilmanton, which included Gilford, Belmont, and all of

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Laconia on the east side of the river, now stands upon the farm. At the raising of this barn, every man, woman and child then living in the town was present.

He was a member of Winnsipeaukee Lodge, A. F. and A. M., of Alton; Crystal Lake Grange, Patrons of Husbandry, at Gilmanton Iron Works; Knights of Pythias, and of John L. Perley Jr. Post, 37, G. A. R., of Laconia, in all of which he took a great interest and especially in the Grand Army. He was always present at the annual New Hampshire Veterans reunion at the Weirs in which he always had a prominent part and was honored in 1891 by being elected department commander.

He had been president and treasurer of Gilmanton Academy for many years at the time of his death.

When the City Savings Bank at Laconia was organized in 1895 he was elected one of the trustees, which office he continued to hold during his life.

He served as a member of the school board, was moderator for many years, and selectman in 1880–81 and 82. He was appointed colonel on the staff of Governor James H. Weston in 1871, elected state senator in 1878–79 from the old sixth district; solicitor of Belknap County from 1885 two years; represented Gilmanton in the Legislature 1899–1900, was appointed by Governor Tuttle and acted as railroad commissioner from 1891 to 1894 and was pension agent from 1894 to 1898.

In writing of his death one of his friends said "His native town has lost its most prominent citizen, a man who was not only the legal adviser but the personal friend of almost every citizen of the community. The Belknap County Bar has seen the last of an able lawyer, who was always courteous and conscientious; who mixed old-fashioned New England common sense with his legal knowledge; and who settled more cases himself out of the court room than he ever prosecuted. The Grand Army of the Republic and New Hampshire Veterans' Association have lost a comrade whose presence was always most welcome at their reunions.

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and social gatherings. And the State of New Hampshire has lost a genial big-hearted companionable man, who made friends everywhere he went and who was known in almost every community from Coös County to the Massachusetts line."

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JOSIAH G. DEARBORN.

FROM THE DARTMOUTH ALUMNI MAGAZINE.

Josiah Greene Dearborn died suddenly January 9, 1920, at the home of his daughter in Providence, Rhode Island.

The son of Josiah and Sarah (Greene) Dearborn, he was born in Weare, New Hampshire, March 20, 1829. Before entering college he had been for several years a teacher, having studied in Francestown Academy and New Britain (Conn.) Normal School. In 1854 and 1855 he was a member of the lower branch of the New Hampshire Legislature, and from 1860 to 1865 was register of probate for Hillsboro county. In January, 1867, he entered the senior class at Dartmouth, and became a member of the Kappa Kappa Kappa fraternity.

After graduation he resumed teaching as submaster in the Lyman School, East Boston, Massachusetts, where he remained till 1870. He was then for four years master in the Boston Latin School. In 1874–1875 he was State treasurer of New Hampshire. After a year's service as superintendent of schools in Manchester, New Hampshire, he practiced law for a time in that city, having previously studied that profession, and was for a time employed in the Second National Bank of Manchester. After teaching again in Boston for a short time, he was postmaster at Manchester from 1885 to 1889. After further law practice, he retired some twenty years ago, and made his home in Manchester. He was auditor of Hillsboro County many years, and a trustee of Merrimack River Savings Bank for twenty-five years.

October 16, 1851, Mr. Dearborn was married to Sabrina L. Hayden of Sharon, Vermont, who died August 14, 1880. They had four daughters, of whom the eldest died in childhood and three survive their parents.

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JASON HENRY DUDLEY.

BY JESSE F. LIBBY OF GORHAM.

Jason Henry Dudley, whose career as an active practitioner of the law extends over more than a half century of time, all in the town where he began his professional life, was the son of Jonathan, a native of Andover, New Hampshire, and Minerva (Armstrong) Dudley.

He was born in Hanover, New Hampshire, November 24, 1842 and died in Colebrook, New Hampshire, March 31, 1918.

While democratic America is accustomed to estimate a man solely by the standard of his personal merits, yet it is at least interesting to learn something of a person's ancestral antecedants; and if we find the branches of a family tree have emanated from a sturdy and commanding stock, consciously or unconciously, most of us give a certain indefinable weight, in greater or less degree, to such fact in our contemplation of the qualities of mind and character of our associates and acquaintances; for it is natural to expect that the branches, properly nurtured, pruned and trained, will, by the process of natural law, reflect the symmetry and vigor of the trunk from which they have sprung. It will not, therefore, I trust, be considered amiss to record in this brief sketch the fact that our Brother Dudley was of a family of distinguished lineage, both in England, the country of its origin, and in this country, to which some of its branches extended in the early days of the settlement of New England. In the history of England the name is prominent among the most distinguished of the nobility. We learn from the History of Coös County that the first of the name in America was Thomas Dudley who came to Massachusetts in 1630, and became governor of the Massachusetts Colony,

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dying at Roxbury, Massachusetts, in 1653, and that Thomas' son, Joseph, was a "popular Governor of New Hampshire." Jason Henry Dudley is a lineal descendant in the eighth generation, of Governor Thomas Dudley and is also connected with the notable Allen family of Vermont, a maternal grandmother of that name having been a cousin of Ethan and Ira Allen.

In contemplating the character, qualities of mind, and ability of our late brother, we are not disappointed in our expectations of finding in him, in large measure, some of those attributes of his distinguished ancestors which commanded the respect and confidence of their contemporaries and the admiration and veneration of succeeding generations.

Laying the foundations of his education in the schools of Hanover, New Hampshire, supplemented by the training of private tutors, he entered the Chandler Scientific School in 1858, became a member of the freshman class at Dartmouth College in 1859 and graduated in the class of 1862 when but nineteen years of age. Like many another ambitious boy of limited means, he made practical application of his learning by teaching a select school at Cornish Flats in 1861, to, in part, provide for the expenses of his college course. On graduation, he became principal of Colebrook Academy bringing to it that fidelity, energy and enthusiasm which were to characterize all of the notable achievements of his after life. During three years of earnest effort he brought this school up to a high standard of excellence, increasing the attendance from about forty to nearly a hundred pupils.

While engaged in this educational work, he pursued the study of law in the office of Honorable William S. Ladd.

From Colebrook he went to Danville, Vermont, in 1865, where he had charge of Phillips Academy for a year, continuing his legal studies with Honorable Bliss N. Davis. In the fall of 1866 he conducted the academy at West Randolph, Vermont, studying law while there in the office of Honor-

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able Edmund Weston. He was admitted to the bar at Chelsea, Vermont, in December, 1867, and began the practice of his profession soon after at Colebrook, New Hampshire, in partnership with Honorable James I. Parsons, under the firm name of Dudley & Parsons, succeeding in the firm Honorable William S. Ladd who had removed to Lancaster. This partnership continued two years, Mr. Parsons disposing of his interest in the firm to Mr. Dudley. He then practiced alone until April, 1878, when he became associated with Honorable Daniel C. Remmick as Dudley & Remick, this connection continuing until May, 1882. From then to the time of his retirement not long before his death, he practiced alone very successfully. As a lawyer he sought to allay strife rather than to promote it, believing justice could thus best be obtained. He brought his clients into court only when a compromise which he believed just could not be effected. He was careful in counsel, thorough in preparation and persevering in the pursuit of his causes when "the battle was on." He made careful examination of the law in any particular case and applied it intelligently in its relation to the facts. Of sound judgment and discretion he thus won and retained the confidence of his clients.

He occupied a large place in the community in which he lived and worked for so many years. He always was active in public improvements, especially along educational lines. He was superintendent of schools in Colebrook for many years, a member of the board of trustees of Colebrook Academy for forty-five years, being chairman a large part of this long period of self-sacrificing service.

He was town clerk for three years and held many other town offices. Nor were his work and influence confined to the narrow limits of his town. His energy demanded and his ability commanded a wider field of usefulness in his county and State. He was at one time a trustee of the State Normal School and of New Hampshire College. In politics he was always a staunch Democrat, and was recog-

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nized by his party as an energetic, fearless and zealous upholder of its principles. Always working faithfully for his party's success, his advice and direction were often sought and always helpful in his party's councils. He thus made his influence felt particularly in the politics of "Upper Coös," and generally throughout his county. As an expression of confidence in his integrity and a tribute to his ability as a lawyer, he was five times in succession elected county solicitor, being first elected in 1878. In 1889 he represented his town in the Legislature and was a member of several important committees. In 1891 he was a member of the State senate from the old first Senatorial District and served as chairman of the Committee on Revision of Laws. He was also elected to the Constitutional Convention of 1903. In all of these positions he served with his customary fidelity and ability and was an influential member of these several legislative bodies.

In his private affiliations he was a member of the Coös and Grafton Bar Association and a charter member of Excelsior Lodge, No. 73, I. O. O. F. and Colebrook Lodge No. 38, K. of P.

He was married September 22, 1869, to Miss Lucy A. Bradford of Vergennes, Vermont, daughter of Dr. Austin and Amelia (Bissel) Bradford, and a direct descendant of William Bradford, the Puritan governor of Massachusetts Colony. Their marriage was blest by the birth of two sons, Allen B., born June 19, 1871; and William H., born April 13, 1873, who died July 2, 1876. Allen died when a young man of twenty-seven years of age, leaving a wife, Alice (Drew) Dudley, and a son and daughter. About two and one half years before his death, Mr. Dudley suffered another severe bereavement in the loss by death of his well-beloved wife and help-mate, but was greatly comforted in his declining years by the loving care of his son's widow and his two grandchildren who lived with him after the death of his wife.

He continued to do business at his office up to a year

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before his death, notwithstanding he had suffered a partial shock soon after the death of his wife.

Jason Henry Dudley was a kind husband and father, a reliable friend and adviser, a useful citizen and an able and conscientious lawyer and public officer. His office was long know as "Dudley's Corner," a name denoting to the citizens of Colebrook the source of safe and sound advice, not only on matters legal, but also on the numerous questions of public and political interest of which so many arise in all communities. "Ask Dudley, he'll know," was a familiar expression of citizens and neighbors.

Friend and counsellor to old and young alike, the school boy as well as the man of affairs sought his aid in their perplexities and anxieties, and never failed to receive kindly attention and advice of a helpful nature. His qualities of heart and mind are fittingly expressed in the words of his obituary published in the *Colebrook Sentinel* in which, I believe, his friends and neighbors and his brothers of the New Hampshire Bar will concur: "He was logical and forceful and always stated his opinions with courage. He was intensely loyal to his government and had no patience with its critics. To him, a creed, or a ritual would mean but little; but having a broad faith in fundamentals, a belief in his fellowmen, practicing charity, dispensing cheer for almost a lifetime, he presents a character based upon a safe foundation." And we might add "one to be long remembered and emulated in all its many excellencies."

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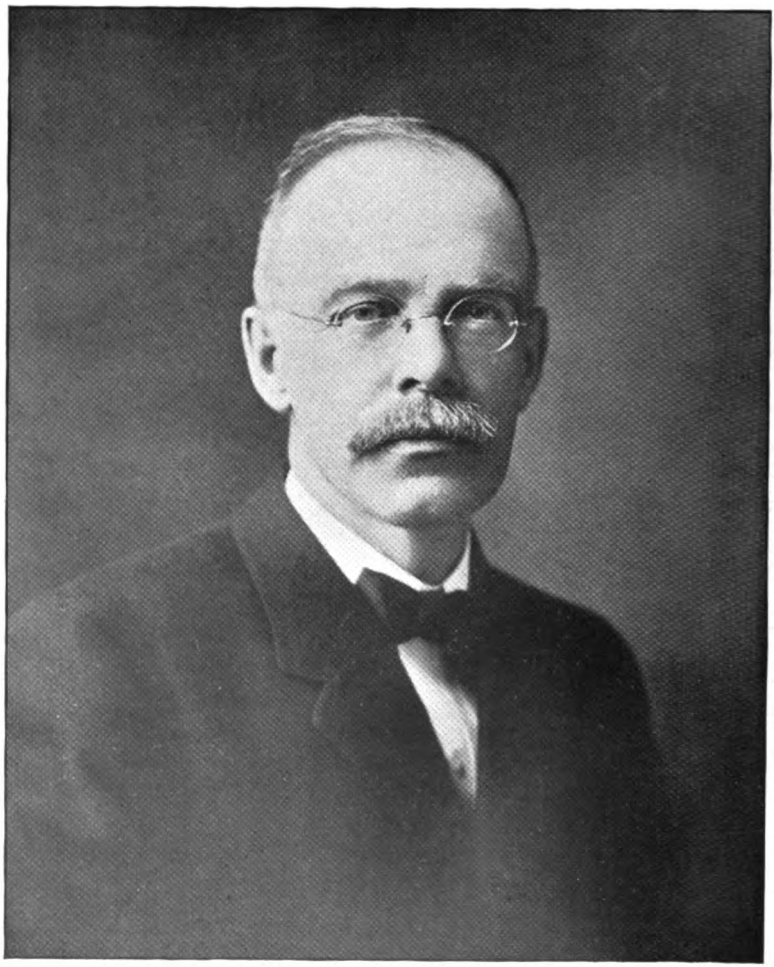

William B. Fellows.

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WILLIAM BAINBRIDGE FELLOWS.

BY STEPHEN S. JEWETT, OF LACONIA.

William Bainbridge Fellows was born in Sandwich, July 5, 1858. He died at his home in Tilton, May 2, 1920.

From his long connection with the public service in various positions of trust and responsibility, it is doubtful if any member of the New Hampshire Bar had a larger acquaintance with the people of the State than the subject of this sketch.

While it was known to his family and intimate associates that his health had been impaired for about a year previous to his death, yet by reason that he continued to attend to the work of his office up to the day before he died no one realized his serious condition, and the news of his sudden demise came as a great shock to the people of the community in which he lived and the entire State as well.

Judge Fellows was a typical son of New Hampshire, loyal to the State of his nativity, and ever ready with all the strength of his intellect to assist in the advancement of every measure looking toward the welfare of its people in every line of human endeavor.

He descended from staunch New England ancestry, several of whom were active participants in the struggle for American Independence. His father, Colonel Enoch Q. Fellows, and his mother, Mary E. (Quimby) Fellows, were natives of Sandwich.

He inherited sound principles of patriotism and love of country.

His father, Colonel Enoch Q. Fellows, performed distinguished service for the Union cause in the War of the Rebellion.

Colonel Fellows entered West Point in 1844 and con-

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tinued in that military school for two years, resigning in 1846. He had as classmates at West Point men who in the Civil War held distinguished rank, among them Generals Burnside, McClellan, Couch, and Reno of the Union Army and "Stonewall" Jackson, of the Confederate Army.

In April, 1861, on the issuing of President Lincoln's proclamation calling for 70,000 volunteers, Colonel Fellows immediately offered his services to the State which were quickly accepted and he assisted in the organization of the first regiment, and was offered a commission as captain but declined it and enlisted as a private, and was mustered out with the regiment, August 9, 1861, and the following day was commissioned colonel of the 3rd New Hampshire Regiment, holding that command until June 20, 1862, when he resigned and took command of the 9th New Hampshire Regiment, resigning from the last mentioned command by reason of ill health shortly after the battle of Antietam in which he participated.

The military career of his father was a source of pride to his son, and Judge Fellows was always interested in military matters. During the period when he was a law student and resided in Laconia, he was a member of Company K, of the 3rd Regiment of New Hampshire National Guard.

Judge Fellows received his education in the public schools of his native town; at Tilton Seminary, from which he graduated with the class of 1876, and at Dartmouth College from which he graduated with the class of 1880.

He took good rank while at college and was well liked by the faculty and students. While at Dartmouth he was a member of the Delta Kappa Epsilon fraternity.

Immediately after his graduation from college he began the study of law in the office of Honorable E. A. Hibbard, in Laconia, and was admitted to the New Hampshire Bar in August, 1883.

Upon his admission to the bar he took up his residence and began the practice of his profession at Ashland, holding his residence in that town until 1885, when he removed to

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Tilton where he continued to reside during the remainder of his life.

In politics he was an active Republican, and thoroughly believed in the principles of his party and gave it his active and earnest support but in politics as well as in the affairs of life he was generous and tolerant with those whose views were not in accord with his own.

During a period of nearly forty years he had held many offices of importance in the public service. Beginning with the year 1881, he was sergeant-at-arms of the New Hampshire Senate in the session of that year. Subsequently he was private secretary to United States Senators Austin F. Pike and Person C. Cheney and while holding these positions was clerk of the Senate Committee on Claims. From 1889 to 1891 and from 1893 to 1897 he was solicitor of Belknap County, and his conduct of the affairs of this important county office was exceedingly creditable. In 1895 he was appointed Judge of Probate of Belknap County which office he held until 1909. The title by which he was generally known and addressed he gained by his service. From 1901 to 1908 he was secretary of the State board of equalization, and in the latter year was a member of the special tax commission. He resigned the office of Judge of Probate of Belknap County to accept the office of State auditor which he held until 1911 in which year he became a member and secretary of the State tax commission which office he continued to hold to the time of his death.

He was a member from the town of Tilton to the New Hampshire constitutional conventions of 1902 and 1912, and in the latter convention took a prominent part in matters relating to taxation.

He held the office of treasurer of the town of Tilton in 1902 and 1906. Judge Fellows was a close student and had a well selected law and general library. He was especially interested in the literary and educational affairs of the community in which he lived. He was a trustee of the Tilton and Northfield Library Association since 1887;

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trustee of the Hall Memorial Library building since 1901 and a trustee of Tilton Seminary for twenty-four years.

The many official positions held by him are indicative of the esteem and regard in which he was held by the people of his town, county and State.

Judge Fellows had no liking for the work of the trial lawyer, but he was notably industrious and painstaking in the examination of the law and facts of every case that was entrusted to him. When he took up the work of secretary of the State tax commission he gave up the active practice of law and rarely appeared in court but from immediately after his admission to the bar to the time of his death he maintained a law office first at Ashland and afterwards at Tilton as before stated.

To the subject of taxation Judge Fellows had given close study and application and he had become a recognized authority on this subject. He delivered a very interesting instructive address on the subject of "Taxation of Intangibles" at the annual meeting of the State Bar Association in 1915.

The work of the State tax commission was particularly to his liking. He gave to the duties of his office earnest and conscientious endeavor, aiding materially in bringing to that commission the high standing it enjoys among other similar commissions in the country.

In manner Judge Fellows was frank and outspoken, notably faithful to his friends to whom he was much endeared by his kindly disposition and his sterling traits of character.

Judge Fellows was twice married, first to Ida Grace Scribner of Ashland, November 1, 1881. Mrs. Fellows died in January, 1908. August 24, 1909 he married Clara Douglas Merriman, then preceptress of Tilton Seminary by whom he is survived, and he is also survived by his two sons by his first marriage, John H. Fellows of New Britain, Connecticut and Paul R. Fellows, of Evanston, Illinois.

His funeral was held in the Congregational Church at Tilton on Thursday, May 6, and was largely attended.

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By order of Governor Bartlett the State House at Concord was closed during the hours of the funeral.

By the death of Judge Fellows the Bar of New Hampshire lost a valued member; the State a conscientious public official who had devoted many years to sincere endeavors for the best interests of the State, and the community in which he lived a high minded public spirited citizen.

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CHARLES F. FLANDERS.

BY IRVING T. GEORGE OF NEWMARKET.

The resolutions of the Rockingham Bar in memory of our deceased brother, Charles F. Flanders, stated, among other things, that he had faithfully observed his official oath as an attorney. On such occasions it is not customary for that association to indulge in fulsome eulogy of its dead. He who attempts it is pretty sure to be corrected by some truthful attorney who, while believing that nothing but good should be said of the dead, is equally strong in his belief that no lies should be told. To avoid this possible embarrassment inquiry was made of those who knew him best whether this statement would be challenged; for it goes without saying that any attorney who gets his living by the practice of law and who faithfully observes his official oath deserves well of his country and is entitled to funeral eulogy.

Brother Flanders was born at Wilmot, New Hampshire, May 20, 1856, the son of William W. and Mary S. (Ford) Flanders. There he lived his childhood and attended the country schools. Later he was educated at Colby Academy and was graduated at the New Hampton Academy in 1879. During the next year he was engaged in railroad work with his uncle, A. C. Flanders, at Portage, Wisconsin. Then he returned east, read law with his father at Wilmot Flats, New Hampshire, with Honorable George C. Wing at Auburn, Maine, with Bingham & Mitchell at Concord, New Hampshire, and from the Concord office was admitted to the New Hampshire Bar, on March 11, 1892.

He married Nellie M., daughter of Moses F. Emerson of Candia, on August 30, 1897.

After a few years successful practice in Concord, his health failed and he was compelled to retire to a country

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practice—locating on the Emerson farm in Candia, New Hampshire. There he struggled, uncomplainingly, with disease and pain. His associates at the bar, not knowing his physical condition, wondered why he located in a town on the edge of the county where there were no commercial or manufacturing interests and where litigants with money would naturally seek counsel from Manchester's bar of able and accomplished lawyers. But he was not the kind of man to burden the bar with the story of his troubles. His devoted wife alone knew how much he suffered until death came to his relief March 24, 1919.

Rockingham County lawyers were not very well acquainted with him because the period of his most active practice was in another part of the State. But he belonged to a race of lawyers. I knew his sturdy old father well when he was the solicitor for the County of Merrimack with his office at Wilmot Flats. The elder Flanders was a strong character whose practice extended well over into what is now the Southern Judicial District of Grafton County. He was a lawyer of the old school, arguing vigorously and at great length even the smallest case before the "pocket justice." It was the theory of that school that what was worth doing at all was worth doing thoroughly and well; and that there were no small cases. But old methods changed and the old school departed when the referee law of 1874 was passed and the constitution was so amended as to except small cases from the right to jury trial.

The younger Flanders had little to do with politics, although he represented his native town in the General Court when a young man; but he was a good citizen. He served the town of Candia for many years on the School Board and he liked the work. His neighbors testify that he was an able and judicious counsellor in their affairs, and that he gave himself freely in the cause of the indigent and friendless. This is also proven by his persistent defense in *State v. Greenleaf* reported in the 71st New Hampshire Report.

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DANIEL HALL.

BY ARTHUR W. HALL, OF DOVER.

This memoir is written with great reluctance and somewhat in trepidation. To do justice to the qualities of Daniel Hall's heart and mind is no easy task. Those of this generation well fitted to do this are few in number. Nearly all, if not all of his most intimate friends have long since passed away, leaving few who were unreservedly in his faith and confidence. One may readily call to mind such names as former Chief Justice Charles Doe, William E. Chandler, John P. Hale, Henry W. Blair, John S. H. Frink, Oliver E. Branch, Edwin G. Eastman, Charles B. Gafney and others, all of whom were at times in close relationship and acquaintance with him, for all of whom he entertained high regard and greatly prized their friendship. All of these names were erased from the ranks of the living before him, and he followed shortly after. He was indeed one of the last of New Hampshire lawyers of his generation. Would that any of the foregoing were living to speak fittingly in his memory.

Daniel Hall was born in Barrington, New Hampshire, February 28, 1832, the oldest son of Gilman and Eliza (Tuttle) Hall. The family is one of the oldest in New Hampshire, the original of that name being John Hall who settled at Dover Point early in the seventeenth century. It was a sturdy race of men through all the years; not notable for gentle blood, great scholarship or political and military prominence, but rather for those solid and enduring qualities which have proven such a valuable inheritance to those of this day, foremost of which was sound common sense, firmness in action and integrity in all departments of life. Vigorous and toilsome out-door living gave them a constitution which made longevity a certainty.

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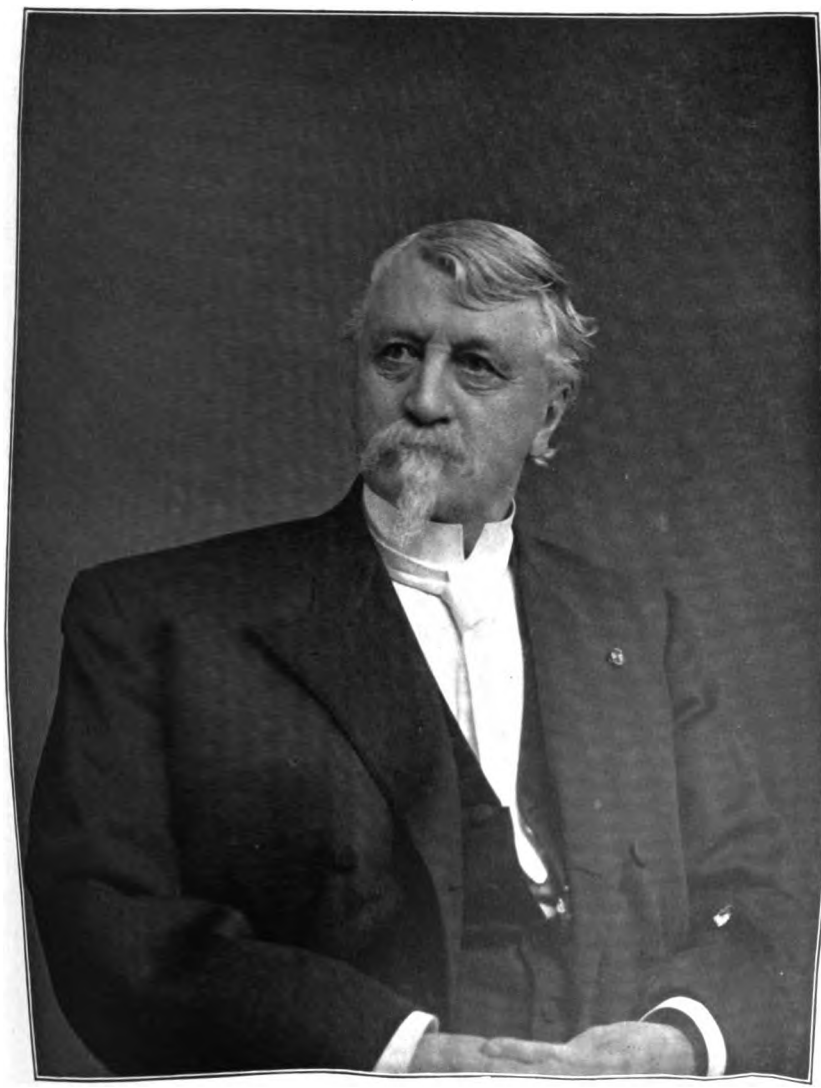

DANIEL HALL.

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Daniel Hall spent the early years of his life on his father's farm. He early manifested ambition beyond his natural surroundings, and determined against great odds to secure a college education, with unflagging zeal he bent his energies to this end and fitted himself for Dartmouth. With the exception of a term at New Hampshire Conference Seminary at Tilton and two terms at Strafford Academy he worked without supervision and entered college perhaps less prepared than any member of his class, but doubtless more earnest in aspiration than any of them. To defray his expenses he taught school during the winter months and graduated in 1854 as valedictorian in a good-sized class; no small achievement when one considers the foregoing details.

He studied law in the office of Daniel M. Christie in Dover, at that time and for many subsequent years the acknowledged leader of the New Hampshire Bar, and was admitted to practice in May, 1860. From 1859 to 1860 he was a school commissioner for Strafford County and in 1861 he served as clerk of the U. S. Senate Committee on Naval Affairs. Through the aid of Senator John P. Hale he secured a commission as aide-de-camp with the rank of captain on the staff of General A. W. Whipple, and was later transferred to the staff of the late General Oliver O. Howard. He took part in the battles of Fredericksburg, Chancellorsville and Gettysburg, being slightly wounded in the latter engagement, and was retired from active service in the latter part of 1863, and served as Provost Marshal of the First New Hampshire District of Portsmouth until the end of the war, a position of great responsibility and personal hazard. It was said of him that while in the occupancy of this office no man ever dared approach him with a crooked proposition.

At the conclusion of the Civil War Daniel Hall made his home in Dover and served as judge of the Dover Police Court from 1866 until 1874, and was state reporter of the Supreme Court Decisions from 1876 to 1877. He was a

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delegate to the Republican National Convention at Philadelphia in 1876, and with several other New Hampshire delegates was largely instrumental in effecting the nomination of Rutherford B. Hayes. He was chairman of the Republican State Committee from 1874 until 1877, a period when the victory of his party was always dearly earned, as many men now past middle life will readily recall. He was naval officer for the Port of Boston from 1877 until 1885, being removed by President Cleveland. He served on the staff of Governor Walter Harriman with the rank of colonel, which title clung to him throughout life, but was by no means of his choosing. From the close of his service in the Boston Custom House he lived constantly in Dover, quietly practicing law, devoting his spare time to study and useful reading, and accumulated a modest competence. Banking was a matter of absorbing interest to him in his later life, and he served for many years as trustee of the Strafford Savings Bank and director of the Strafford National Bank of Dover.

Daniel Hall married, January 25, 1877, Sophia, daughter of Jonathan T. and Sarah (Hanson) Dodge, of Rochester, New Hampshire. Their one son, Arthur Wellesley Hall, born August 30, 1878, is a practicing attorney in Dover, and occupies his father's old home. Mrs. Hall was a woman of great executive ability, possessing great intellectual strength and a most lovable and charitable personality. Her somewhat untimely death occurred December 1, 1918. Her husband did not long survive her. Borne down by the weight of years, increasing bodily infirmities and great grief and loneliness he passed away January 8, 1920, after a somewhat lingering illness, within a little more than a month of his eighty-eighth birthday.

The main public facts of Daniel Hall's career have been briefly recounted. They represent the modest achievements of a life of assiduous work and unremitting devotion to duty. Much properly remains to be said, of his sound scholarship, his systematic business methods, his ability as

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a lawyer and his general personality. It is to be regretted that his salient qualities cannot be adequately treated.

His scholarship was pre-eminently sound. Over-worked and trite as the phrase may be he is best described as a scholar of the old school. He became early firmly grounded in the classics and mathematics, and the study of the Greek and Roman authors was ever to him a fascinating diversion. He was thoroughly conversant with the masters of English and American literature, loved the study of history, and to a remarkable degree possessed the historical sense. He had perhaps too little patience with some modern studies and methods, but in saying this it must not be inferred that his face was set against the present, or that he was uninformed on all matters of modern thought and research. He held, not entirely without reason, that no man can be properly called a scholar without a foundation of classics, and deprecated the present day tendency to minimize the importance of the same. Such of his speeches and papers as have found their way into print indicate plainly his bent of mind. Such grace and happiness of diction could only be gained by a study of the classical authors, and a survival of the love of old-fashioned education in this work-a-day world is salutary and refreshing to not a few.

Accuracy was the keynote of his character. His business methods were all his own, and it is doubtful if many could follow them and obtain the exact and intelligent results that he invariably brought about. All matters in his hands were handled with the utmost care, all reckonings being scrupulously and punctiliously made. He knew almost to a dollar how his own property stood from day to day, and he was equally familiar with the funds of others in his care.

He had little taste for the every day practice of the law. Court cases with their attendant examinations, cross-examinations, refutations and arguments were never in his line, and the writer cannot remember that he ever tried a case before a jury. But in the care and settlement of estates

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he was in his own field. He was versed to a fairly masterly degree in the intricacies of the laws of descent and distribution, testamentary disposition and the various laws of inheritance taxation. Such accounts of his as are now in the Probate Court of Strafford County and other counties as well are models of accurate and intelligent workmanship, showing keen knowledge of the subject and painstaking attention to all matters of detail. Such accounts were always filed in his own handwriting as he could never accustom himself to giving dictation to a stenographer. It may be observed in passing, that any estate, be it ever so small, received from him the same conscientious attention as one mounting into the hundred thousands. In the matter of fees he was at times almost absurdly moderate. He was often exercised in the fear that in a given case he had placed the value of his services too high. His constant aim was to seek what was fair under all the circumstances and not what the particular service was intrinsically worth.

He was unhampered by any particular rules of conduct. His aim was to act according to the particular circumstances and exigencies of the matter at hand, and general philosophy never entered into his calculations. Given a situation and he would look at it from all angles. He was cautious in making decisions, but nevertheless nothing was ever settled in his mind unless it was settled right. His manners were easy and assuring, the result of a large and ever continuing acquaintance with men of ability and standing. If upon first meeting him he appeared to be a trifle cold it was due in large part to a natural shyness, which is spite of large intercourse with superior people he never quite overcame. But when in mixed company and interested in any particular subject he could converse with a fluency and knowledge which seems almost marvelous. His fund of reminisence was practically inexhaustible, his sense of humor was keen, and he was often the life of a gathering. His tastes were simple and democratic, his personal habits rigorously self-denying. He had a great love for all domestic animals,

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particularly horses, a love which even a late attachment for automobiles never quite supplanted.

His politics were to him a matter of profound principle. From early life he held unwavering faith in the tenets of the Republican party, as his untiring efforts in his years of activity amply attest. He did not at times hesitate to express his lack of concurrence in particular party measures, but he held that bolting the party ticket was rarely justifiable. There was not a trace of jealousy or soreheadedness in his make-up. His partisanship, though positive and uncompromising was free from venom or rancor, and many Democrats were among his most valued and intimate friends. The Grand Army of the Republic was of strong sentimental interest to him throughout his later life and he filled all the offices in the New Hampshire State Department from time to time.

He remained sane and calm almost to the end. His affairs were well ordered and he left no vexatious problems for his successors.

If I were to sum up the life of Daniel Hall in one word that word would be "completeness." He lived long and well, his life was packed with diligent and useful work, and he left an honored name. Can one wish more?

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WALTER CHANNING HARRIMAN.

BY CHARLES R. CORNING OF CONCORD.

Walter Channing Harriman, son of Walter Harriman, Governor of New Hampshire in 1867–1868, and Almira R. (Andrews) Harriman, was born in Warner, September 8, 1849, and died at his mother's old home in Waterloo June 29, 1918. After the custom of the time he went to the town schools and later to Colby Academy, New London. In 1873 he began the study of law in the office of Lyman D. Stevens, Concord, who in his day attracted more students than any lawyer at the Merrimack County Bar with the possible exception of John Y. Mugridge.

Prior to this period, when a young lad in his teens, an impressive and unusual experience opened before him. His father, who had served actively during the Civil War, been taken prisoner and exchanged, was colonel of the Eleventh New Hampshire Regiment in 1864, and commanded a brigade at Petersburg. Throughout that exciting and constantly changing campaign, one that stands forth in history as a crisis of that war, young Harriman was an eager spectator. The phases and incidents connected with those weeks passed at headquarters about Petersburg were to the close of his life a chapter of vivid realities to Mr. Harriman.

He pursued his law studies with Mr. Stevens until nearly the end of the prescribed three years, when he went to the firm of Tappan & Albin, and in 1876 was admitted to practice. Mason W. Tappan, a distinguished lawyer soon to become attorney-general, remained to the close of his life a firm friend and wise adviser whose words and precepts were not unheeded by the young man to whom they were addressed. Mr. Harriman, soon after his entering the bar,

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changed his residence from Concord, the home of his family, to Portsmouth, where he speedily gained a comfortable and promising practice.

Governor Prescott appointed him solicitor of Rockingham County and he was twice elected subsequently under the provision created by the amended Constitution of 1876. In the eighties he moved to Nashua, serving as a member of the Board of Education and for several years was president. In 1902 he was one of the Nashua delegation to the Constitutional Convention.

Never strong physically, subject to illness, he was compelled to leave the city of his choice and seek the calm community amid the charms of his native Warner, where he remained until his death. Always warmly interested in the legends and history of New Hampshire, and particularly attracted by the stories and anecdotes concerning men of a former generation, Mr. Harriman proved himself a master of reminiscence and quaint illustration. His nearest neighbor was William E. Chandler, with whom his relations became intimate and professionally confidential.

The last winters of his life were spent in Concord but disease had taken a fatal hold on him, yet his agreeable traits of companionship did not appear to be lessened or impaired by his suffering. He passed away suddenly and without premonition in sight of the home where he had lived so many years.

Mr. Harriman married Mabel A. Perkins of Portsmouth, who survives her husband. The children are Ralph A. Harriman of Providence and Almira A. Swenson of Concord.

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WALTER D. H. HILL.

BY JOHN B. NASH, OF INTERVALE.

Walter David Hammons Hill was born in Sandwich, New Hampshire, on the twenty-sixth day of February, 1870, and died at his residence in the village of North Conway, March 12, 1920.

He was the son of David H. Hill and Mary Moulton Hill. His father was a prominent attorney in Carroll County for many years and was judge of Probate for Carroll County from 1880 to the time of his death. Judge Hill at his decease left his family entirely dependent on their own efforts for support. Now, Walter at this time was nineteen years of age and he had but a high school education. From childhood it was his ambition to become a lawyer, but with his living to earn and his legal training to gain it was no small task. He, however, went ahead with a quiet determination that recognized no such a thing as failure. He worked by day and studied by night until he had graduated from the Sprague Correspondence School. During his preparation for the law he was clerk in the post office at Wolfeboro, New Hampshire, and he was register of probate from 1893 to 1903. He was admitted to the Bar of New Hampshire at the age of twenty-eight, and later was admitted to the Bar of the United States District Court. He began practice in Ossipee in 1898 and moved to North Conway on the death of F. B. Osgood, and at his decease he had a large practice from which he derived a substantial income. In 1908 he married Miss Lena E. Pitman, the second daughter of the late Lycurgus Pitman.

As a lawyer he was not a student of text-books but he studied the Reports of New Hampshire, Massachusetts, and several other series of reports as soon as they were in print.

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WALTER D. H. HILL.

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He tried many important cases in court and he tried them with unquestioned ability. He had a legal mind and legal sense and to the law subordinated his unquestioned musical and literary talents. He was prosperous so far as this world's goods are concerned and he had a very pleasant and happy home presided over by a charming wife. He was an honest man, whatever he promised in any matter of business he remembered as well when the time of performance came as at the time of the promise. He never encouraged people to remain in litigation but on the other hand he was inclined to keep them out of it.

He joined the Masonic order in 1893 at Center Ossipee, and afterwards became a Shriner at Concord.

In the full tide of his prosperity and in the prime of his manhood he was suddenly stricken with a fatal and painful illness, from which he suffered for nearly a year and realized for months that the end was surely approaching.

He has passed from our presence and in closing this brief notice I know of nothing which better expresses his thoughts, when contemplating death, than the following quotation:

"The sun shines and the shadows fall and the wind whispers among the leaves as before. The seasons change; the time of bud and blossom comes again and again, and the snow's white mantel falls upon the graves of departed friends. The awful indifference of nature to the darkness and pain and sorrow of death seems harsh and pitiless as we turn from the grave of those we loved to the teeming life of a summer's day."

"If a man die shall he live again?" The ceaseless tide of human life has flowed on and on through countless ages since that heart stirring question was first recorded. Science has been appealed to in vain to answer, and all the passionate longings of love get no reply. Our friends and loved ones pass from the great mystery of life to the equally great mystery of death—and the rest is silence. Only faith can make a hopeful response and never is faith so hopeful as when, regarding duty well and faithfully performed, it listens in the darkness and deep silence of the tomb and hears the still small voice: "Well done, thou good and faithful servant."

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JOSIAH H. HOBBS.

BY IRVING J. HOBBS, OF NORTH CONWAY.

The New Hampshire Bar suffered a distinct loss when Honorable Josiah Howard Hobbs, the oldest and best known lawyer in Carroll County, passed calmly away at the old home in Madison, New Hampshire, on September seventh last. The son of the late Dr. Daniel S. Hobbs and Judith Chapman Hobbs, he was born in Madison, New Hampshire, December 22, 1834. He received his preparatory education at Parsonfield Seminary and Fryeburg Academy, Maine. He graduated from Dartmouth College in the class of 1856 with degree of Bachelor of Arts, and later Dartmouth honored him with the degree of Master of Arts. Like so many men of his generation, he spent some time teaching school, being for some time principal of Limington Seminary, Maine. He graduated with honors from the Albany, New York, Law School in 1859, and began the practice of law in the same year in his native town of Madison, and soon gained a wide reputation for superior legal ability. He later maintained an office in Conway for some years. He was first appointed county solicitor for Carroll County by the Governor and Council, and later was elected and re-elected to the same office for fifteen years. His name is associated either as counsel or judge with nearly all of the celebrated cases of Carroll County of his generation. He was counsel for the government in the Wolfeboro robbery case and in the Frost Homicide case; he was counsel for the defense in the noted case of *State* vs. *Sylvester Cone*, who was indicted for murder in the first degree. He was engaged in the Mason Will case and in the Knowlton Will case, and the preliminary trial in the Dr. Hatch murder case was held before Mr. Hobbs.

Squire Hobbs, as he was usually known, was noted for his

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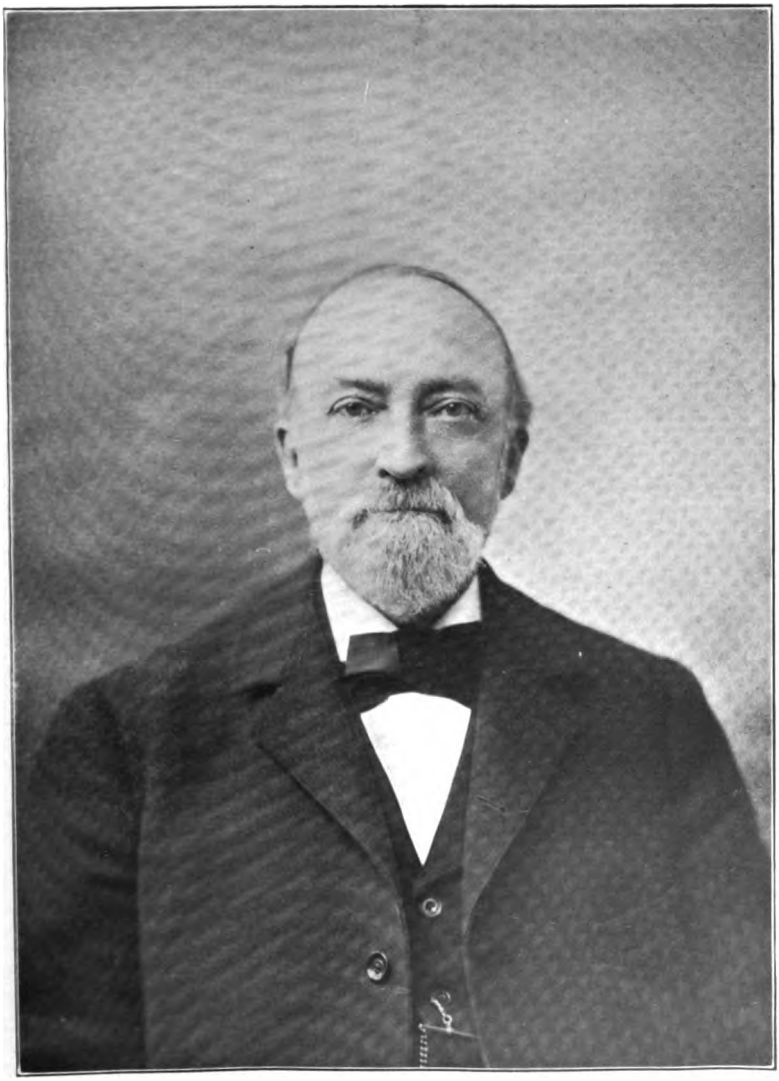

JOSIAH H. HOBBS.

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generosity to the poor. He always gave freely and fully from his large store of legal knowledge to all who came to him, regardless of their station in life, whether rich or poor. He never distressed the poor, and prevented many from doing so. It was often said that he practiced law for the good that he could do rather than to enrich himself. He was noted for his skillful and thorough preparation of every case and had the distinction of never having had an indictment fail during his fifteen years as prosecuting attorney for the county. Mr. Hobbs had a natural gift of oratory and was noted for the eloquence of his arguments before both Court and Jury. He was called on as a public speaker in various parts of the State in h's younger days. He frequently argued cases in the Supreme Court and was very successful there, and was twice offered the position of judge on the bench of the State.

He served his town as selectman and town clerk many years and was the Republican representative to the Legislature from his district in 1862 and 1863, and again in 1883. He served each time upon the Judiciary Committee in the House o Representatives, and he was the only man from Madison who was ever honored by being placed upon this committee, the most important in the Legislature, or who ever occupied the Speaker's chair. He has been president of the Carroll County Bar Association and had long been a member of the state Bar Association. He belonged to the Tri-Kappa Society of Dartmouth College.

Mr. Hobbs was married January 3, 1878, to Mary E. Erwin, a member of the distinguished Erwin family of western New York. Mrs. Hobbs died at Madison, July 5, 1890. She was a woman of liberal education and marked literary ability and a noted author. A volume of her poems was published by the American Publishing Association.

Mr. Hobbs is survived by their only child, Irving J. Hobbs, Esq., of Madison, New Hampshire, who is also a lawyer. His devotion and attendance to his father afforded him much comfort, especially during the latter years of his life.

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LEWIS W. HOLMES.

BY ROY M. PICKARD, OF KEENE.

The sudden death of Judge Holmes on the evening of March 12, 1919, was a very distinct shock to the community. He was well known to the men in the store, in the office, and on the street, and each felt that a familiar figure had gone. Even those who had been before him when he was judge and had received sentences at his hand had a feeling of regret. They had felt the weight of the sentence, but they knew and respected him as an honorable and upright judge.

Lewis Ward Holmes, son of Lewis and Sarah Clark Holmes, was born in Readsville, Vermont, April 25, 1848, but spent the greater part of his life in Keene, where he attended the high school. Thence he went to Kimball Union Academy at Meriden and afterwards was graduated from Dartmouth College in the class of 1871, with the degree of A. B. He then studied law in Keene with Wheeler & Faulkner, leading attorneys, was admitted to the bar about 1874, and practiced here until 1882, being at that time city solicitor, and resigning to go to Washington, D. C., where he had been appointed an examiner in the United States pension office.

Mr. Holmes remained in Washington until 1888, when, on the death of Honorable Edward Farrer, clerk of courts for this county and police justice for Keene, he was offered the positions Judge Farrar had held and accepted them. He continued to hold the clerkship of the Court until the time of his death, but in April, 1918, on reaching his seventieth year, retired from the position of justice of the Municipal Court on account of the age limit set by statute. Besides being city solicitor for a time, as above stated, he was clerk of the State Senate in 1881, a representative to the

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Legislature about ten years later and one of the aldermen of Keene in 1894. He was clerk of the Cheshire County Bar Association.

October 2, 1879, at her home in Springfield, Vermont, Judge Holmes married Miss Helen E. Barlow, previously a successful teacher in the Keene schools, who survives him, together with three sons, Dr. Robert W. Holmes of this city, recently returned from service in France; Thomas B. Holmes of Keene, mining engineer; and Edward B. Holmes, mining engineer, of Rio Janiero, Brazil.

Any mere chronological account of Judge Holmes' life will seem colorless to those who knew him well. His was particularly a life which cannot be told by a mere recital of dates. At best they present a mere skeleton, but the real flesh and blood can be seen only by an intimate acquaintance with the judge during his lifetime. He was a man of strong and lasting opinions, and these opinions he never hesitated to express. This freedom of expression seemed at least blunt to many a stranger who first observed it but it was characteristic of the man and no one would have had it otherwise. He was a man of intense convictions, with no trace of fear or hypocrisy, and such a person must use forceful speech to express himself. He was honest and open as the noonday, and throughout his long career as clerk of the Superior Court and judge of the Police Court of Keene no one to my knowledge ever accused him of any word or act that was untruthful or dishonorable. He was honest, conscientious, and upright, both as a man and as a judge.

Judge Holmes was a good judge of human character, and formed correct estimates of men almost instinctively. This faculty, together with his power quickly to discover the important points in any case brought before him, made him a very good trier of cases of fact. The case that was presented before him must be fully proven or it would quickly end. His record in connection with the trial of cases is remarkable, for in the twenty-five years of his career as a

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judge, only one appeal from a conviction before him has been reversed by a jury verdict.

Such a man naturally had strong political convictions. He was a Republican, and always gloried in the achievements and success of that party. During the Mexican disturbances, he was most bitterly opposed to the policy of the administration which seemed to him to lead us nowhere, and the fruits of Mexican disorder were brought clearly home to him in the escape from death by violence of his son, the sole survivor of a party of fourteen American engineers who were going into Mexico to look over mining properties there, with the knowledge and consent of the Mexican government. His heart was in the cause of England and France against Germany, and I have often heard him speak of the great calamity that must result if Germany should be victorious before our aid could become effective. He was a strong, virile American, hating all show and hypocrisy, and piercing with biting sarcasm the pretensions of many a so-called altruist and reformer.

It is the unanimous statement of all attorneys who have practiced in connection with him, while he was clerk or judge, that his advice and criticism were most helpful. No one could be more serviceable, especially to young attorneys who earnestly sought his advice in connection with papers or cases filed in his court.

No sketch of Judge Holmes' life would be complete unless remark be made of the very intimate relation existing between him and his family. He was intensely proud of his sons and they of him and to the day of his death, they were friends and companions together in the truest sense. In earlier life Judge and Mrs. Holmes had sacrificed that the sons might obtain college training, and their success in their professions was very pleasing to him. His death meant to his family the double loss of a husband and father, and a close companion as well.

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ALFRED FRANKLIN HOWARD.

BY WILLIAM E. MARVIN OF PORTSMOUTH.

Alfred Franklin Howard, for fifty years a member of the New Hampshire Bar, died September 24, 1919, at Portsmouth, where he had lived practically all his professional and business life. He was born at Marlow, New Hampshire, February 16, 1842, the son of Ervin and Philinder (Simonds) Howard. He married Eliza Fiske of Marlow, who died in 1878, leaving a son, Arthur Fiske Howard, who survives his father. He later married Mabel Y. Smith of Willimantic, Connecticut, who also survives him.

His father, Ervin Howard, a blacksmith and carriage maker, also was born at Marlow, in 1801, the son of Thomas Howard, who came there from Lyme, Connecticut.

Alfred Howard received his education in the country schools of Marlow and at Tilton Seminary; after graduating from the latter institution, he taught school in the vicinity of his birthplace, for a-while, and always interested himself in the subject of education, not only having taught, but having been superintendent of schools of Newport and a member, at different times, of the Boards of Education of Marlow and of Portsmouth.

He read law with the late Judge W. H. H. Allen and Shepard L. Bowers, of Newport, where he prepared himself for the New Hampshire Bar, to which he was admitted in 1868. Immediately upon his admission he established himself in Portsmouth, where he experienced the usual vicissitudes of the profession until 1885, when he may be said to have entered upon his real career, by identifying himself with the Granite State Fire Insurance Co. then about to be organized.

He was chosen City Solicitor of Portsmouth and held that office five years until 1873. He served as collector

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of the Port of Portsmouth for sixteen years, until just previous to the first Cleveland administration.

In politics he was a Republican, always taking a keen interest in political affairs, although his open and active participation in them ceased when he completed his term of service as collector of the Port of Portsmouth. He often said that it was a wise inspiration that prompted him to retire from the holding of political office at the time he did.

His service in that office had, to a considerable extent divorced him from the law, and for a short time after he finished his duties there he carried on the business of an insurance agent; this paved the way to his participating in the organization of the Granite State Fire Insurance Co., of which he became the secretary, or general manager, continuing as such to the time of his death. The affairs of this corporation were conducted by him with such sagacity, prudence and foresight, that at the time of his death it constituted a monument to a life work of which any man might well be proud.

Although Mr. Howard had the advantage of capable advisers and a wise directorate, it is not too much to say that the Granite State Fire Insurance Co., of nation-wide reputation, in its field is the work of his head and hands.

It is often remarked of successful men who have started in the legal profession, only to have their talents diverted to commercial or business enterprises, that "what the Law lost Business gained.' This hardly could be said of Alfred Howard, since although he did not practice law for a long time prior to his death, he retained the legal stability of mind and habit of analyzing matters coming before h m for judgment; and while he rendered no paid professional service, his advice and counsel, in matters o˙ politics and in quasi-legal affairs, constantly was sought, not only by laymen but by practising lawyers, with great profit to themselves. So he could not be said wholly to be lost to the Law.

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He had an orderly habit of mind and his judgments, slow in forming, were for that reason rarely erroneous. Of the student type, of modest disposition, of quiet, unassuming manner, always meticulously dressed according to his own fashion, he formed a dignified and respected member of the community; equally an ornament to the legal profession and to the business world.

He liked his fellowmen and whenever found in any gathering of men of like calibre was certain to be an influential if inconspicuous unit. His recognized business ability attracted people to him and made him welcome on many boards.

At the time of his death he was a member of the Warwick Club, Portsmouth Athletic Club, The Knights Templars and St. Andrews Lodge of Masons all of Portsmouth. He was a vice-president of the Portsmouth Trust & Guarantee Co., a director of the New Hampshire National Bank, and a Trustee of the Piscataqua Savings Bank, besides being secretary of the Granite State Fire Insurance Co. He was for many years a member of the Board of Police Commissioners of the City of Portsmouth, had sat in many state, political and constitutional conventions and had attended as a delegate one National Republican Convention, and another, as alternate to a delegate.

Born of poor parents in a small country community, with limited educational facilities, but with a mind and body so constituted as to enable him to make the most of what was at hand, with a reasonably up-looking ambition, Alfred F. Howard achieved that which is peculiarly open to American opportunity, an honorable, dignified career, and pecuniary independence, coupled with the esteem and affection of his fellow citizens. The legal profession may well pride itself in having directed his early efforts, and the business world take satisfaction in that he applied his legal training so well to the complexities of the calling he elected to follow later.

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GEORGE ISAAC McALLISTER.

BY FRANK C. LIVINGSTON OF MANCHESTER.

"The old order changeth yielding place to new."

These lines of Tennyson though they were written many years ago yet contain such a self evident truth that we of this present generation find that that old style of legal practitioner whom we not only reverence but affectionately refer to as a "gentleman of the old school" and who, with his friends, the town minister and the town doctor, formed the triumvirate of so many small New England villages is rapidly passing out of existence.

Some of us at least who have been brought in frequent association with this type of lawyer, can remember him with admiration and respect, recalling that in his safe probably were stored and without expense the papers of a large number of his neighbors and in his memory the family skeletons of so many of his clients, both of which he guarded well from the curiosity seeker, and the gossip. Brother George I. McAllister, the subject of this sketch would hardly be classed among the old style of practitioners though he possessed many of their good qualities nor was he in the order of their successors, the modern business lawyer, but rather among that transition class of lawyers which has so many of the characteristics of each.

His ancestry was from that distinctive class which we so commonly refer to as the Scotch-Irish race. A race upright, moral, with an almost severe reverence for their religious faith and a fanatical devotion to duty. These racial characteristics not only had their effect upon him, but probably developed that great love of justice, truth and liberty which later characterized him as a man and a lawyer.

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GEORGE I. MCALLISTER.

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Born on the old homestead in Londonderry, New Hampshire, December 11, 1853, his early years were passed amid the usual surroundings of country life to which he doubtless owed his vigorous constitution as he also owed his tenacity of opinion to his Scotch ancestry.

We of the Scotch blood are reputed to be tenacious of our idea but Brother McAllister was so many generations removed from the old original Scotch stock that he was not like that old Scotchman of Boston who was wont to say, "I am open to conviction, but I would like to see the man that can convince me." While he was tenacious of his ideas and always well supplied with arguments to support them, he never was obstinate.

He subjected all questions to the test of cool judgment and experience and you were always sure of attentive and courteous treatment at his hand, if he thought you were sincere and honest. He had no sympathy with those who thought that this world owed them a living,—it owed them nothing but an opportunity to earn such a living by sobriety, industry and thrift,—traits of character which had been developed in him not only by his parents but by faithful and competent teachers in the common schools, and at Pinkerton and Kimball Academies and Dartmouth college while his own observations had taught him that hard work and perseverance are indispensable for success in any walk of life. It was through such instrumentalities that he laid broad and deep the foundations of his high character and successful life.

Graduating from Dartmouth in the class of 1877, he soon after came to Manchester, where he entered the offices of those nestors of the New Hampshire Bar, Honorable David Cross and Honorable Henry E. Burnham, later entering into partnership with Judge Burnham. It is said that their office at that time was the first law office in the city to have a telephone installed. Judge Burnham had just retired as the Judge of Probate for the County of Hillsborough and as a result their firm had the cream of

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probate practice in that and Rockingham Counties. This line of legal work strongly appealed to him and with his painstaking methods and absolute insistence upon exactitude, he was peculiarly adapted to the same. I have known him to redraft a will five or six times to make sure that his language clearly expressed the intent of the testator.

Like so many other lawyers Mr. McAllister took an active interest in politics, largely I think from his strong conviction that it was a duty which every citizen owed to his community. Receiving the appointment of Deputy Internal Revenue Collector for this first district he devoted four years of faithful service thereto. He never would leave his office in the evening until his accounts absolutely balanced, though as sometimes happened he worked until the "wee small hours" to accomplish this.

Whatever he did was done most thoroughly and carefully, at times it may have seemed to those associated with him as if he were too careful.

From the same sense of duty, he became a member of the Constitutional Conventions of 1902 and 1920.

He had no fads or fancies, like so many of us, and it is doubtful if he could tell a golf club from a fly rod, save that both were instruments of pleasure. He took his recreation and pleasure in working in and for Masonry from whose hands he received her highest gifts.

> "Loathing pretense, he did with cheerful will
> What others talked of, while their hands were still!"

And because he thought it was a duty which he owed to the fraternity and this community, we find him performing the duties of Chairman of the Trustees of the New Hampshire Masonic Home, up to the very day of his death.

His strong and rugged body enveloped an equally strong and virile mind, and character, making him a man of tremendously strong convictions, who loved his country above aught else and who was intensely faithful and earnest to the highest ideals of duty.

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When the legal profession was called upon to help the Government in the draft work, he took his turn with the other Manchester lawyers, in filling out questionnaires although at that time he was suffering from that dread malady which ended his life, and was not physically fit to attempt the task and which no doubt helped shorten his life. Never through disease or weakness did he fail in any duty.

He was an eloquent speaker, devoting his talents mainly to patriotic addresses for Memorial Day or the dedication of Masonic buildings.

On December 22, 1886 he married Mattie M. Hayes, having two children, Bertha McAllister Hawkins and Harold C. McAllister, also a graduate of Dartmouth college, both of whom survive him.

Heroism is not always found on the battlefield, and for the last few years of his life, he faced the grim Messenger fearlessly, knowing full well what the outcome was to be but fighting bravely on to the end which came December 31, 1919 and refusing to let only a few of his most intimate friends into the secret of his disease. No one can meet suffering with more heroic fortitude than he did. He died as he would have wished "with harness on his back." No shadow of wrong, or dishonor, ever fell upon him, and he has left as a legacy to posterity that most priceless gift, a good name.

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WOODBURY L. MELCHER.

BY F. M. BECKFORD OF LACONIA.

Woodbury L. Melcher was born in Gilford, in the County of Belknap, October 7, 1832, in that part of Gilford which is now a part of the city of Laconia, very near the spot where he resided for a great many years and until the time of his decease, the same being the beautiful location at the corner of Union Avenue and Main Street known as the Melcher Estate.

Mr. Melcher completed his academic course and prepared for college at the Gilford Academy, which was situated on Academy Street at the location now occupied by the Laconia High School Building. He graduated from Bowdoin College in 1856 and after receiving his diploma from that college he became principal of the Gilford Academy, which position he held for about two years.

He entered the law office of Honorable E. A. Hibbard as a law student and was admitted to the bar in 1862. In 1861 he was elected Register of Probate of Belknap County, which position he held until 1871. In 1864 he became treasurer of the Laconia Savings Bank and continued to act as the treasurer of this bank until 1886 when he declined re-election. He was then elected trustee which office he held from that date until the date of his decease. He was a director of the Laconia National Bank from 1876 until 1894, and was vice-president of the same from January, 1893, until September, 1894, when he resigned both as director and vice-president.

Mr. Melcher, however, did not confine his activities to the banking business. He was a large stockholder in the Laconia Water Works and one of the charter members of the Laconia Street Railway Corporation. In 1885 he en-

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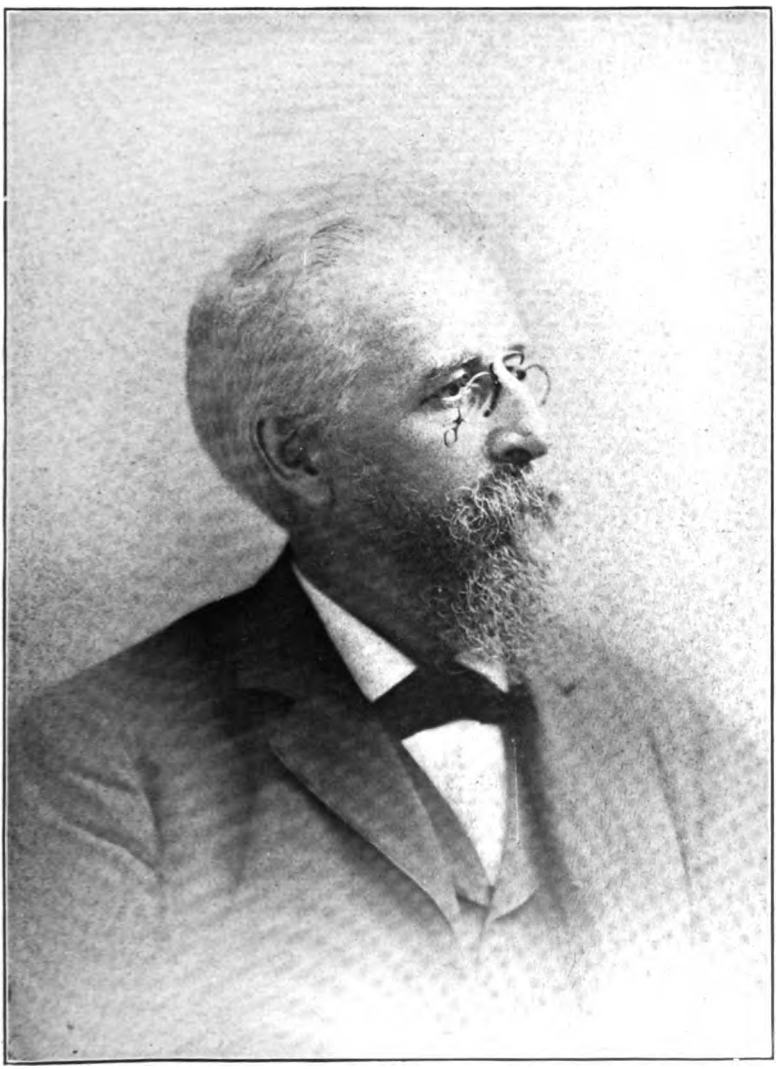

WOODBURY L. MELCHER.

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tered the insurance business and founded the Melcher & Prescott Agency, which has become one of the large insurance agencies in the State. He was greatly interested and took a very active part in the organization of the Laconia Hospital Association and was the first president of that corporation. Always deeply interested in the cause of the young and the benefits of a correct educational system he was a member of the Board of Education for his town and city from 1862 until 1890, and for eleven years was president of the board.

In 1889 he was a member of the Constitutional Convention and was a very influential and important member, assisting much in the legal formation of the amendments which were submitted to the people for ratification.

Mr. Melcher never was actively engaged in the trial of cases in Court, but as an adviser and counsellor his opinions were often sought, and it may well be said that such advice was sound and well founded. He also did quite an extensive business in the Probate Court. He was mayor of his city from 1903 until 1905, his administration being prosperous and successful. He was a very prominent candidate for governor in 1889.

Although not actively engaged in the practice of law, yet he always retained his connection with the Belknap County Bar Association, and was next to the oldest member at the time of his decease.

As a citizen of his city he was always interested in its welfare and progress. A man of sterling character he believed in the high ideals and ethics of his profession. Although known to but few of the legal profession outside of his own city yet those who knew Mr. Melcher will always hold him in high esteem as a man of unwavering fidelity, honesty, and integrity, both as a lawyer and a citizen.

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CALVIN PAGE.

BY TRUE L. NORRIS, OF PORTSMOUTH.

When Calvin Page passed away on December 12, 1919, New Hampshire lost one of its most prominent citizens, the city of Portsmouth a man who had for more than fifty years been identified with its social, political and business life, and the Bar of New Hampshire one of its most successful industrious and honorable members.

Born in North Hampton, August 22, 1845, the son of Captain Simon Dow Page and Judith Rollins Page, he spent his boyhood days on the home farm, attended the town schools and was fitted for Harvard College at Phillips-Exeter Academy, entering Harvard in 1864 as a member of its sophomore class. Lack of funds and an ambition to earn his own way in life caused him to give up his collegiate course and on June 19, 1865, he entered as a student the law office of the late Albert R. Hatch of Portsmouth, then one of the leading practitioners at the New Hampshire Bar. He was admitted to practice in 1868, and from that time to his death, a period of more than half a century, he was actively engaged in the practice of his profession. His diligence, his integrity and his promptness in the transaction of business almost immediately gave him a standing at the bar and won the respect and confidence of his fellow citizens.

Born and bred a Democrat, Judge Page early in life began to take an active interest in politics. The intensity of New Hampshire politics in the era from the close of the Civil War to the time when the State ceased to attract national attention because of the change of her election from March to November was probably unequalled elsewhere in the country. Judge Page busy as he was found time to enter

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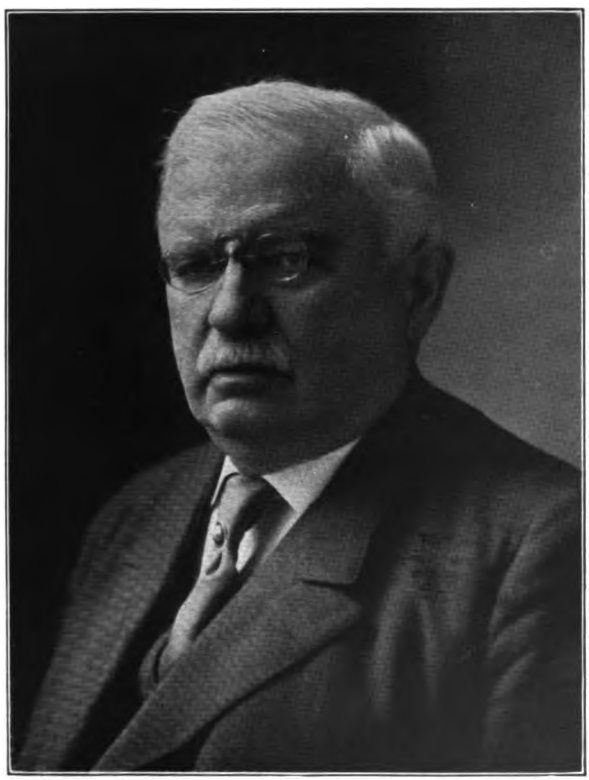

CALVIN PAGE.

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into the campaigns of that period and his voice was heard in all of them. As a stump speaker his racy style and his quaint illustrations delighted his audiences. He was a protegè of those sterling democrats Albert R. Hatch, Daniel Marcy and Frank Jones, and he threw himself into all political contests with the same fervor that he engaged in the cause of his clients.

His fellow citizens early and often selected him for positions of honor and responsibility. He was judge of the Municipal Court, city solicitor, water commissioner, twice mayor of his city, and three times a member of the State Senate—in 1893, in 1903, and in 1917. In 1903 he introduced and advocated for the first time in our Legislature a bill for the election of United States Senators by the people. Though the measure failed to become a law at that time, he lived to see it adopted not only in this State but throughout the country. He vigorously attacked the lobby and publicly called attention to its acts.

In addition to the public offices already referred to, Judge Page took a just pride in his service of more than a generation upon the public school board of Portsmouth, giving much of his valuable time to the cause of education. He also was selected, in 1885, by President Cleveland as collector of internal revenue for the district of Maine, New Hampshire and Vermont and performed the duties so acceptably that Mr. Cleveland reappointed him when he was reelected in 1892.

Judge Page served in the Constitutional Conventions of 1889 and 1918, and took a prominent part in the debates of both years.

In addition to his legal and political activities, Judge Page was prominent in banking, railroad and manufacturing interests. He was president of the New Hampshire National Bank of Portsmouth; the Trust and Guarantee Company of the same city; Granite State Fire Insurance Company; Portsmouth Fire Association; Portsmouth Shoe Company; Suncook Water Works Company; Eastman

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Produce Company; Manchester and Lawrence Railroad and Laconia Car Company; director of the Upper Coös Railroad and the Concord and Portsmouth Railroad.

In 1910, Judge Page's duties became so numerous and exacting that he felt compelled to practically retire from general practice and turned it over to his partner, later Governor, John H. Bartlett, retaining the care and management of several large estates, including that of the late Frank Jones, of which he was an executor and trustee.

Judge Page was an all round man and his was a many sided nature. The basis of his success was his strict integrity. He was a hater of sham and hypocrisy. He was frank and outspoken, oftentimes to his own detriment. His intimate friends always saw beneath his passionate utterances a warm and affectionate heart. Judge Page was a man of untiring industry. Work with him was what play is to others, and he literally died in the harness. Yet he was never so busy that he could not spare time for social amenities. He loved comradship, he enjoyed his friends and he delighted to mingle with his fellowmen. There was no part of his long busy life that he did not thoroughly enjoy. At court time and at a gathering of members of the bar, he was always the life of the party. He told a good story and he enjoyed hearing one. He was a splendid host and he delighted in gathering bright minds about his festive board.

As a lawyer his growth was a steady growth that comes from patient industry and study, rather than from any one or more brilliant episodes. He prepared a case with great thoroughness and was rarely surprised in its trial by anything the other side introduced. Probably few lawyers in the State had a larger probate practice than he, especially in the latter years of his life. He drew up many wills and he administered many estates, a considerable number of which were large ones. He was careful and methodical, even though his working desk was usually knee deep with legal papers and books. He never acquired the habit of

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charging all the traffic would bear for his services. On the contrary, his fees were very moderate and in many instances he made no charge whatever, even when his services were of a very considerable value.

Governor Bartlett tells a little story of when he was a partner in the firm a gentleman called at the office and inquired for the judge. Being told to pass into the judge's private office he went in but soon returned with the information that he was asleep in his chair, and inquired if he should awaken him. Being advised to do so, he returned to the judge, woke him up and had a long consultation with him. Asking how much the charge was, he was told that there was no charge. The gentleman seemed surprised but went out, soon returning with a copy of a book upon the fly leaf of which was written "With the compliments of the author, William Dean Howells." The judge afterwards said that it was one of the most satisfactory fees he had ever received, and he and Mr. Howells were ever after firm friends.

For years Judge Page arose at 5.30 o'clock, had breakfast at 6:30, went to his office and remained there until 9 or 10 or later in the evening, taking out a half-hour for lunch and supper. He seemed to thrive upon it and had but little patience with the latter day walking delegates.

In 1902, Dartmouth College conferred upon him the honorary degree of Master of Arts. He was president of the State Bar Association in 1904–05, and his annual address to the members of the bar dwelt principally upon the illegitimate use of the lobby in the Legislature and the evil results of the then common free pass system. This address was widely read and discussed by lawyer and layman throughout the State.

In presenting this brief and incomplete sketch of the activities of Judge Page, it may not be out of place to call attention to the part he played in the memorable Peace Conference of the delegates from Russia and Japan, brought about in August 1905 by the mediations of President Roose-

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velt—one of the most famous gatherings the world has ever known. For this mid-summer meeting, the President wisely selected a spot in this state where the cool breezes would tend to calmness and comfort. The noted Hotel Wentworth at New Castle was then a part of the estate of Frank Jones of which Judge Page was trustee. Under the clause in Mr. Jones' will giving his trustees power to do anything with his estate that they thought he, himself, would do if living at the time, Judge Page, through the President and Governor McLane, invited the peace delegates to the number of nearly one hundred, including all their attachés, to live at the big hotel free of charge so long as the conference should last; and the delegates and all their attendants from both nations lived there for more than thirty days at a cost to the Jones estate of over twenty-five thousand dollars. In recognition of the hospitality of the Jones estate and its trustees, Japan and Russia each gave to the State of New Hampshire ten thousand dollars, the income of which is annually distributed among the charitable institutions of the State.

Judge Page is survived by his wife and one daughter, Agnes, the wife of Governor John H. Bartlett, Judge Page's former law partner, and a grandson, Calvin Page Bartlett.

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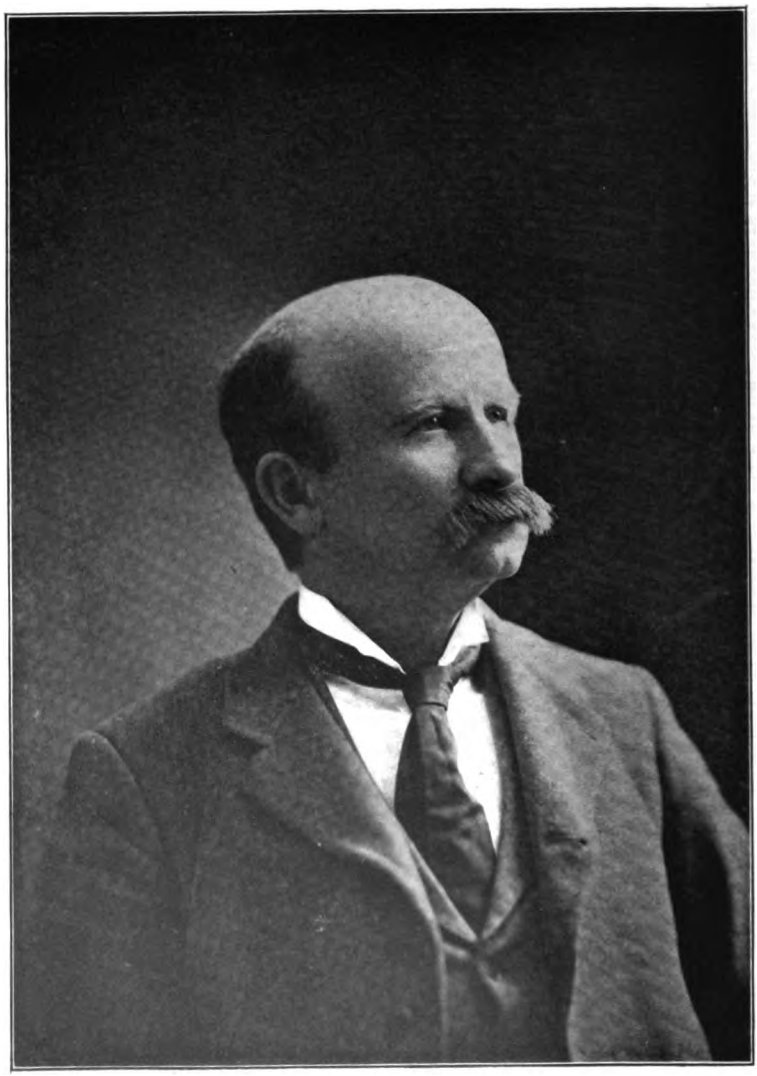

FRANK WEEKS.

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FRANK WEEKS.

BY EDGAR WEEKS OF MARLBOROUGH, MASSACHUSETTS.

Frank Weeks, son of Algernon Sidney Weeks and Sarah Jane (Rogers) Weeks of Wakefield was born in that town August 3, 1851.

He was a descendant of Leonard Weeks who came from one of the northern counties of England about 1660 and settled in Greenland, New Hampshire, where in 1710–1712 Samuel, son of Leonard, built the well-known brick house which has always since been owned by his descendants bearing the same family name.

Frank Weeks was educated in the common schools and in Wakefield Academy, an institution locally famous in its day but long since discontinued. A lyceum formed a valuable part of the work of the school and he became noted for his readiness and vigor in debate. He was then and always during his life fond of reading and especially devoted to the older poetical and historical writers. He delighted in committing to memory long passages from these writers and especially from the earlier poets. He was never of strong physique and this tended to his adopting a profession as a means of livelihood.

From 1867 to 1873 he was engaged a part of the time in teaching country schools, always with much success. While not so employed he was for the most part engaged in his studies which were of a wide range and zealously pursued. During the latter part of this period be became interested in the study of law. In 1873 he was appointed inspector of customs at Boston where he remained two years.

He was admitted to the New Hampshire Bar in 1875, and immediately began the practice of law at Ossipee, where he continued to reside until his death which occurred March

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10, 1919. He married August 1, 1883, Mary Isabel Roles. They had no children.

He was always a Republican and took much interest in local affairs but repeatedly refused to accept office and held practically none. One exception, however, should be noted. When the constitutional convention was to be held in 1912 he was nominated by both the Republican and Democratic parties to represent Ossipee in the convention, and was unanimously elected. This signal proof of the confidence and esteem of his townsmen was always highly appreciated by him.

His reputation as a lawyer grew with his years. He was well read in the law, thorough in the preparation of cases, forcible in their presentation and always devoted to the interests of his clients no matter how small the matter in which he was engaged. Students in his office were constantly taught both by precept and example that the profession of the law is one involving serious obligations and responsibilities, among which he held foremost that of promoting justice for needy persons without regard to their ability to make adequate payment. He delighted in cases involving much research and labor even when they offered slight promise of reward other than to see that justice was done. He was scrupulous in carrying out every promise that he made and believed in requiring those with whom he did business to follow the same course.

Soon after beginning the practice of law he became interested in timber lands and from time to time bought large tracts in Ossipee and other towns, and he continued to own a large quantity of such lands up to the time of his decease. He retired from active law work ten years or more prior to his death and afterwards spent much of his time in looking after his real estate interests. He was from childhood an ardent lover of nature and found great enjoyment in the out-of-doors life incident to this work. He became deeply versed in forest lore and the theory of timber growing. To him trees represented not alone a money value but a most

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beneficent work of the Creator. These were his friends and he delighted in the work of trimming extensive groves that he owned and in watching their response to his care and oversight. He never operated timber lots, and whenever he sold them avoided as far as possible witnessing the cutting and marketing of the trees.

He was a man of many fine traits of character. While quiet and unassuming almost to the point of reticence he was always affectionate and generous in his family relations and was ready to respond to a cry of distress from whatever quarter it came. His benefactions were many and various, although owing to his dislike of notoriety the objects of his charity were enjoined from disclosing the source.

After retiring from active practice he found much pleasure in traveling through various sections of the country as well as the Canadian provinces. The writer accompanied him on several of these trips, always with much profit as well as pleasure on account of the keen interest shown by the subject of this sketch in all that he saw and heard. This was especially true with reference to matters of historical interest in the places that he visited, and the traditions and folk lore of the inhabitants. His trained mind and habit of philosophizing upon matters that came under his observation were never better shown than while on these trips.

In later years, while somewhat enfeebled and unable to travel his love of nature was predominant. He was never more happy than while driving through the country byways and whiling away the time in his pine groves, including those bordering on the shores of the beautiful ponds and lakes near his residence. These pursuits together with his ardent interest in literature of the better class which he had cultivated from boyhood went far to make his last years both dignified and happy. The end came peacefully and to the last he showed to the utmost all his loveable traits.

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APPENDIX.

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CONSTITUTION.

OBJECTS OF THE ASSOCIATION.

Article 1. The objects of the Association shall be: 1. To promote the honor, dignity, efficiency and usefulness of the legal profession in the community,—by maintaining a high standard of learning, industry and devotion to the exacting service of the law, as qualifications for admission to membership,—by resisting every influence which may tend to degrade our order from the rank of a liberal and learned profession to that of a sordid money-getting trade, —by doing what we may to make the profession felt as a strong conservative power in the community, always in favor of good law and good government as well as in favor of a wise and just administration of the laws,—by doing what we may to restore and maintain the confidence of the community not only in the learning, fidelity, integrity and honor of the profession when dealing with the rights and interests of clients, but in their patriotic devotion, as a class, to the cause of good government and the general welfare of the State. 2. To promote good-fellowship, stimulate a just professional pride, and advance all the purposes above set forth by frequently meeting together, as well for social intercourse and enjoyment, as for conference and consultation upon the more serious matters which concern our professional obligations and rights, and our relations with the people and the State. 3. To preserve the memory of worthy members of the profession by publishing such modest and truthful accounts of their lives and doings as may be worthy to be rescued from the oblivion which otherwise so inevitably swallows up the most devoted and useful labors, as well as the most brilliant achievements of the lawyer, as soon as he is overtaken by the fate which awaits us all, and retires from the field of his activity,—his victories and defeats.

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MEMBERSHIP.

Article II. Any member of the legal profession, in good standing, who resides or practices in this State shall be eligible as a member of this Association. Such persons may be admitted as members upon the written approval of the President and Secretary of the Association, and the payment of the entrance fee, hereinafter mentioned.

LOSS OF MEMBERSHIP.

Article III. Any member who shall fail to pay the annual dues of the Association before January first of the year after the annual meeting at which the same became due and payable shall be considered as thereby resigning his membership, and the same shall be lost accordingly, provided that the executive committee may, upon payment by the member of all unpaid dues, reinstate him as a member, and provided that a member whose dues shall have lapsed for two or more years in succession may be readmitted in the discretion of the executive committee upon payment of the entrance fee hereinafter mentioned; and provided further that persons who have been active members may be retired from active membership by vote of the Association, and such members shall be relieved from the payment of dues and assessments, but shall nevertheless, be eligible to office.

Charges in writing may be preferred by any member against any other member of the Association, and upon investigation thereof by the Executive Committee and recommendation by them the member so charged may be expelled by a majority vote of the members present and voting at any meeting proper to act upon the subject.

OFFICERS.

Article IV. The officers of the Association shall be a President, one Vice-president, a Secretary, who shall also be Treasurer, and an Executive Committee of twelve members, consisting of one member from each county and the President and Secretary *ex officio*.

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The President shall preside at all meetings of the Association and of the Executive Committee.

The Vice-president shall preside at meetings of the Association in the absence of the President.

The Secretary shall be *ex officio* secretary of the Executive Committee. He shall keep proper records of the meetings and doings of the Association and of the Executive Committee, and shall make a report of the doings of the Association at the annual meeting.

As Treasurer he shall, if required, furnish a satisfactory bond, and shall receive all monies of the Association and pay all bills approved by the President. He shall keep true and full accounts of the financial affairs of the Association and shall make a report of said financial affairs at the annual meeting.

The Executive Committee shall have the general care and management of the property and affairs of the Association, subject to such direction and control as the Association may at any time think proper to give and exercise. Five members of the Executive Committee shall constitute a quorum for the transaction of business. The Executive Committee shall have power to fill vacancies in the offices of the Association.

The Secretary shall have all powers given to and perform all the duties incumbent upon clerks of corporations; and the Executive Committee shall have all powers given to and all duties incumbent upon boards of directors under the corporation laws of this State, and in addition, the approval in writing of all of the members of the Executive Committee to any proposition presented to them in writing, by mail or otherwise, by the President or Secretary for their consideration shall be as effective for all purposes as the action of a majority at any meeting of said committee.

CHOICE OF OFFICERS

Article V. The regular officers of the Association shall be chosen by ballot at the annual meeting and shall serve

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until the next annual meeting and until others are duly chosen in their places.

ANNUAL MEETINGS.

Article VI. The annual meetings of the Association shall be holden at such times and places as shall be fixed by the President and Secretary.

SPECIAL MEETINGS.

Article VII. Special meetings may be called by the Executive Committee at such times and places as they may think proper. And special meetings shall be called whenever not less than twenty members file a request in writing therefor, specifying the objects of the same.

NOTICES OF MEETINGS.

Article VIII. Notices of meetings shall be given by the Secretary by sending a printed notice thereof by mail to each member of the Association at least ten days before the date of meeting and by such other notice as the Executive Committee may direct.

ADMISSION FEE AND ANNUAL DUES.

Article IX. Every person on becoming a member of the Association shall pay such admission fee as may be prescribed by the By-Laws, not to exceed five dollars ($5.00), which shall be in full for dues to the next annual meeting of the Association.

The annual dues shall be as prescribed in the By-Laws and shall be payable at the annual meeting for the year next ensuing.

AMENDMENTS.

Article X. This constitution may be altered, amended or repealed by a majority vote at any annual or special meeting, of which the notice shall specify the subject-matter of the proposed alteration amendment or repeal or the articles to be affected thereby.

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BY-LAWS.

ANNUAL MEETINGS.

Article I. The annual meetings of the Association shall be holden at such times and places as shall be fixed by the President and Secretary.

SPECIAL MEETINGS.

Article II. Special meetings may be called by the Executive Committee at such places and times as they may think proper. And they shall be called whenever requested in writing, specifying the objects of the same, by twenty members of the Association.

NOTICE OF MEETINGS.

Article III. Notices of meetings shall be given by the Secretary by sending a printed notice thereof by mail to each member of the Association at least ten days before the date of meeting and by such other notice as the Executive Committee may direct.

POWERS OF MEETINGS.

Article IV. All matters within the powers of the Association shall be in order at the annual meetings of the same. But all matters to be acted on at special meetings shall be mentioned in the notices therefor.

EXECUTIVE COMMITTEE.

Article V. The Executive Committee may establish such regulations for the government of their Board, not inconsistent with the constitution and By-Laws, as they may think proper.

LEGISLATIVE COMMITTEE.

Article VI. Biennally, before or at some time during the session of each General Court, it shall be the duty of the

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president of this Association to secure the services of, and to appoint, one or more members of the bar—preferably some member or members of the judiciary committee of the House or Senate—to prepare and submit at the next annual meeting of this Association a review of the work of the General Court.

At said annual meeting it shall be the duty of the president to appoint a committee on legislation consisting of three members whose duty it shall be to consider the matter of proposed legislation and to submit at the next annual meeting, a report with recommendations for the consideration of the Association in open forum—notice of the subjects to be discussed being given in the call for the meeting.

Special meetings of the Association may be called at the request of a majority of said committee, upon approval of the president.

It shall be the duty of said committee to represent this Association before the succeeding legislature and to submit to that body the recommendations of the Association, if any.

ADMISSION FEE, ETC.

Article VII. Every person on becoming a member of the Association shall pay the admission fee hereinafter specified, which shall be in full for dues to the next annual meeting. The entrance fee shall be $3. The annual dues shall be $3, and shall be due and payable at the annual meeting for the year next ensuing.

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REPORT OF THE TREASURER, 1919–1920.

Balance on hand at date of last annual meeting:		
Liberty Bonds,	$1,000.00	
Cash,	607.67	
		$1,607.67
Received for dues,	$444.00	
Received for Bar Association reports,	40.00	
Received for half-tone engravings,	19.25	
Interest on Liberty Bonds,	21.25	
		524.50
		$2,132.17
Paid out for:		
Incidentals at last year's annual meeting,	$36.74	
Expenses of speaker,	57.23	
Postage and printing, including printing of annual report,	428.53	
Stenographic services,	25.00	
		547.50
Balance on hand,		$1,584.67

ATTEST:

JONATHAN PIPER,
Secretary.

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OFFICERS OF THE BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE.

1920–1921.

President—JOSEPH MADDEN of Keene.

Vice-President—REUBEN E. WALKER of Concord.

Secretary and Treasurer—JONATHAN PIPER of Concord.

Executive Committee—

CHARLES M. DALE of Portsmouth.
WILLIAM H. ROBERTS of Dover.
IRVING J. HOBBS of Conway.
BENJAMIN W. COUCH of Concord.
RALPH W. DAVIS of Manchester.
THEO S. JEWETT of Laconia.
CHESTER B. JORDAN of Keene.
F. W. JOHNSTON of Claremont.
FRED E. WRIGHT of Woodsville.
HARRY G. NOYES of Gorham.

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PROCEEDINGS

OF THE

BAR ASSOCIATION

OF THE

STATE OF NEW HAMPSHIRE

N. S., Vol. 4, No. 5

1921

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PROCEEDINGS

OF THE

BAR ASSOCIATION

OF THE

STATE OF NEW HAMPSHIRE

1921

CONCORD, N. H.
RUMFORD PRINTING COMPANY
1921

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PUBLICATIONS

OF THE

Bar Association of the State of New Hampshire

NEW SERIES, VOLUME FOUR . . . . PART FIVE
(OLD SERIES . . . . . VOLUME NINE)

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PRESIDENT'S ADDRESS.

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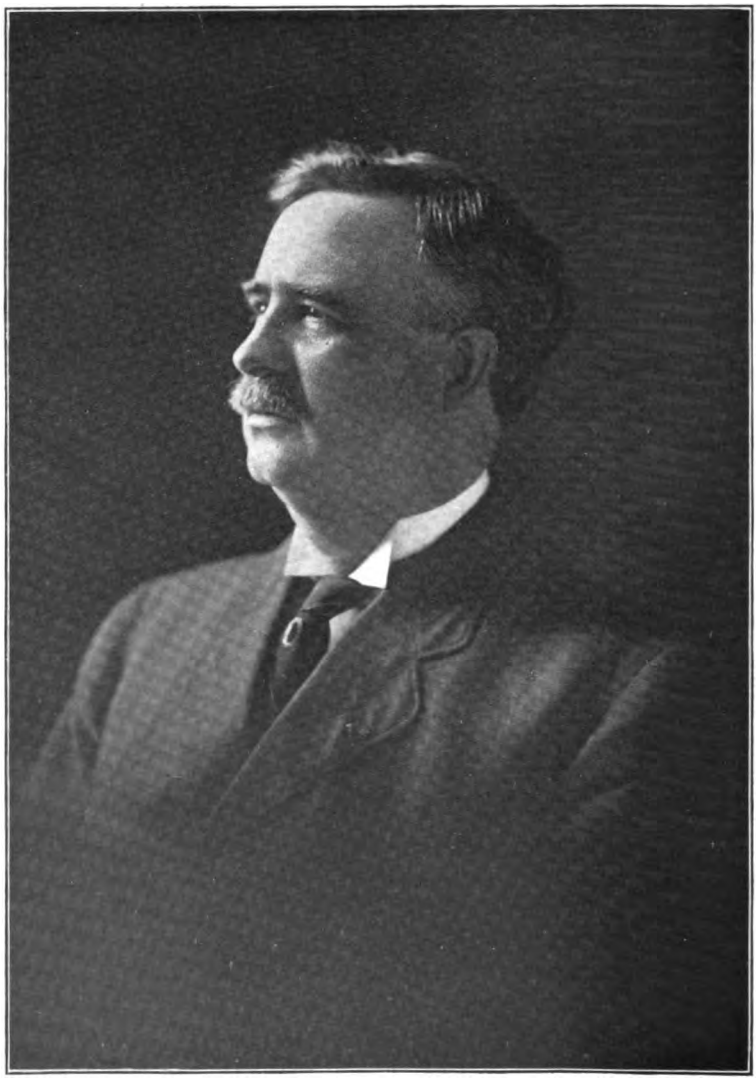

JOSEPH MADDEN

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PRESIDENT'S ADDRESS.

BY JOSEPH MADDEN.

Brother Members of the Bar Association of New Hampshire:

In opening this meeting, I will not indulge in any praise or allude in any boastful way or manner to ourselves, our Association, our State, our nation or the government. We know that we stand high in all these respects, and there is no need of recounting virtues that are so well known. We do recognize and glory in the work and labors of our predecessors in this Association and in the Bar of the State, and in their important achievements in matters of law and justice, but while doing so, we must be mindful that we do not lose sight of the benefits to be derived from the inspiration of their example, particularly in their adherence to fundamental principles rather than expediencies, and thus merit the title of Patriotic American Lawyers. And by patriotism, I do not mean the same thing characterized by Johnson as "the last resort of scoundrels," but that exalted state of mind whereby we are filled with an abiding faith in, and love and admiration for our Country and its institutions, and which should be exemplified by a lively desire and a determined purpose to see that no harm may come to it from without, and that from within, no evil tendency may be encouraged or allowed to develop.

I believe that evil tendencies or movements of and in the body politic are prevalent at the present time, and for several years have been not only tolerated, but to a great extent encouraged, and that if persisted in, they will have a more sinister influence and effect upon, and will prove to be more dangerous to the destinies of America than any foreign menace that is now apparent. And I have made this subject the burden of my remarks.

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I refer particularly to the present-day tendency to conduct much of public business from an autocratic or bureaucratic angle, rather than from a democratic one.

When I commenced to practice law over thirty years ago, there were only a few state commissions, and the common man or ordinary citizen never really knew that he was subject to governmental control except when the local tax collector called upon him.

Since that time, several and sundry bureaus, commissions and departments have been established, all of which touch us most intimately in our daily lives and all administered by a public official or bureaucrat, residing or having his habitat at the seat of government in Concord, and conducting public affairs with the air of an autocrat, and under no responsibility to the public at large, giving us what may be termed long-distance or absent treatment in matters governmental.

Now I am not so much concerned with the adoption of these institutions as I am with the powers or possibilities of control with which they have been endowed. To most of them have been delegated power to make ordinances, rules and regulations, in many cases bordering closely on the power to legislate. In addition to this full and complete administrative and executive authority, the power and the right to hire and select the personnel to carry these powers into effect have been given them. So that in this State, we have several different classes of agents, inspectors and officers travelling our highways and byways, seeking for some petty offender on whom they can impress the "Majesty of the Law." It is a general axiom with them that if they do not make complaints or bring prosecutions, it will be assumed that they are not efficient. I am tempted to mention some of these institutions, boards or commissions, but refrain for the reason that I could not mention them all, and it might appear that I was indulging in invidious criticisms on certain of them. But let me call to your attention that a citizen cannot make a barrel of cider with-

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out a permit; his child cannot fish in the old mill pond without a license; he cannot get married without passing a mental or physical test if some busybody suggests its advisability to some board of health; the hotel keeper cannot permit two persons to drink from the same glass; the factory inspector calls on the manufacturer and dictates; the milk inspector makes his usual rounds; and the motor vehicle patrolman watches your goings and comings eager for a case in court. I might go on all day enumerating special instances, but you know them as well as I.

And it is not only within the confines of our state that we observe this proclivity, but already the national government, following, if you wish, the movement within the states, or in conformity with the general trend, is and has been reaching out and touching us in our general lives in much the same way. We have had the food controller, the coal controller, and the officers acting under the so-called Lever Act to punish profiteering. We have now the federal prohibition officers and agents and officials of other activities that deem it their first duty to find some infraction of some law on which a complaint and prosecution can be based.

They are subject only to headquarters, and are usually appointed on account of political or family influence.

The effect upon these officers themselves is bad; they only see their personal interest in the work, and the financial success of and credit for their particular bureau. No excuse or mitigating circumstance enters into their attitude, and they soon become callous and hardened in their attitude to the public and the rights of the citizen. In some cases they have been known to entice and induce persons to violate the law so that they might be prosecuted. Only recently it has developed that at Keene a man was employed by the state prohibition enforcement officer or by the United States officers for the sole purpose of inducing others to violate the law by shipping liquor into New Hampshire, and to give notice of the intended shipment to

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the county or federal officers so that the parties might be arrested at the proper time. Now these practices are unworthy of any public official, but it shows the length to which they will go in pursuit of their game. The maxim that the end justifies the means must have no place in our jurisprudence or policy of government or criminal law enforcement.

The effect on the public is first, one of annoyance, second, provocation, and third, expense. People are annoyed and provoked by the constant surveillance and inspection, and the result of the myriad complaints constitutes great expense in fines, costs and legal fees in addition to what is levied as taxes to maintain the bureau.

In a great many cases, the offence is of a very trivial character, and it either tends to lessen respect for all law, and this makes lawless citizens, or to subject them to a process of abject submission, which destroys their self-reliance and independence of thought. I have observed little boys being led into our police station by an officer. None of them could be over ten years old. They had with them fishing poles cut from brush and a string for a line, with hooks. They were only warned for fishing without a license and allowed to go, but what of the influence on these children? Will it not leave a definite impression on their minds, either for better or worse? They have had an experience with police officers and the law. They will have either one or the other opinion, a contempt for such a law, or a feeling of dread.

The law-abiding American citizen is a docile creature and he tolerates many things, and may in time come to look upon these meddlings as the usual procedure. But in time, these practices will become so general, burdensome and obnoxious, that there will come a radical change. What that change may be, especially if coupled with the various menacing doctrines now being propagated, is not pleasant to contemplate. It is better not to govern people too much. Let me illustrate: I have been present at

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some sessions of the United States District Court and have seen a large number of men brought before it charged with bringing into the State a small quantity of liquor under the Webb-Kenyon law, and at other times for making home brew, "hootch," or moonshine for their own consumption. Many of these were of foreign birth and were addicted to their old home habits, and not capable of realizing that what was legal yesterday is a crime to-day. They were invariably made to pay from $25 to $50. Do you think the benefits of Americanization are wasted on them, or will they think that socialism or sovietism is the better policy? The American citizen may not see the ultimate result at present, of these tendencies, and for this reason it becomes the duty of the bar as a conservative force to point to them, to warn the people, and to do our part that they do not become dominant in our policy.

And it is not alone upon the bureaucrat or the citizens that these influences bear, but they also affect our Courts, particularly our inferior Courts, and oftentimes the solicitors. The officer or agent brings an offender in. No matter what the evidence may be, whether it connects up with an offence or not, whether there may be a reasonable excuse or mitigating circumstances, his object is to get a conviction, and establish a reputation for efficiency. They are so insistent that the solicitor cannot refuse a complaint. If he does, he subjects himself to criticism in the report to the chief. When the culprit is brought into Court, the same attitude is maintained. The judge is influenced to impose a sentence more severe than the nature of the case warrants. If the respondent appeals, when it gets to the Superior Court, it is oftentimes evident that the case does not amount to much, that a simple warning would have been sufficient, but the costs must be paid. And the respondent, finding it cheaper to submit than to fight, pays the costs and goes out feeling that he has been imposed upon and made to pay unjustly.

I believe that the whole system of bureaucratic govern-

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ment is wrong and dangerous, that the idea is growing, and that we as lawyers should take heed of it and check its growth so far as in us lies the power and opportunity.

Some of the most important acts ever passed by Congress were enacted during the past two years. These acts touch upon many phases of the life of the people, and are so far-reaching that they are astounding to even lawyers of long experience. What is the attitude of the people toward them?

I might call your attention to the statement of Dr. M. C. Whitaker of Baltimore in testifying before the House Rules Committee of Congress, wherein he stated that the Czar of Russia had been dethroned and shot for exercising far less autocratic power than is now vested in the prohibition commissioner under the so-called Volstead Act. When such men give utterances of this kind, what do you think is the feeling of the ordinary person who has had experience with the oppressive intermeddling of these public functionaries?

I want to point out one more instance of this tendency to illustrate the extent to which it has grown: the law passed at the last session of the Legislature in regard to public works control in Manchester. As you all know, the policy of our government is, or at least has been and ought to be, to allow the fullest power of local self-control. That, I believe in, and I think you all agree with me, but we see here the purpose to curtail and limit this control without giving the citizens a chance to vote on the question. It is all in the line of this tendency, "Let us take the power from the people and appoint a bureau." If it is a good thing to do this in the case of our largest city, why not do it for all our cities? Why not abolish our elective county commissioners and have them appointed by the governor, our mayors, selectmen and all officers? The State is supreme, and it may do all these things if ever a well-organized clique may deem it advantageous or opportune.

We are told that it is well to keep these activities out of

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politics, but is not politics the place for them? Is it not the theory of our government that they should constitute our politics? And as they more intimately and directly affect the public, the more reason that they should be subject to its control.

Last winter, the New Hampshire Manufacturers' Association held a meeting at Concord, and one of our state senators made the remark in the course of an address that the Legislature was too large, that with ten good business men the State's business could be done in a great deal less time, and at infinitely less expense. Well, he is no doubt right, but that is not the theory or soul of our policy of government, and we have not as yet reached that state of subserviency where we are willing to substitute an oligarchy for it. But if that is what we want, let us go about it at once! If it is the policy the people desire, the sooner it is put into effect, the better. We might as well abolish all town and city charters, do away with our county organization, and have all officers appointed by the governor and the executive council, and then if we are severely logical, do away with state sovereignty and let the government at Washington administer our affairs. Let it send its viceroys to our state capitals, and its tax gatherers to our cities and homes.

I am talking in favor of the democratic principle in our system of government as against the philosophy of autocracy, for the principle of local control as against centralized control, and the responsibility of public officers to the public and not solely to some bureaucratic chief.

Those who seek for a statute or a constitutional provision for every pet notion of this kind, and a bureau to carry it into effect, are, in the long run, dangerous enemies, however well meaning their intentions may be. And we should prevent, if possible, amendments and changes in our methods promulgated by emotionalists, who are too impatient to await the orderly course of the electorate.

In giving voice to these criticisms, I do not wish to be

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understood as objecting to the advisability or desirability of accomplishing the benefits designed, but rather to criticize the methods of appointment of the chiefs and the agents, and to their manner of conducting their activities.

There are a few things in regard to procedure in our Superior Court to which I wish to allude, and one is in regard to the delay caused in small cases, simple collection cases, and in some other peculiar cases, by the interim between the terms. Why not amend the statutory law and adopt rules so that cases may be entered at any time after service and the defendant be required to appear and plead within a stated time thereafter, with a statement of his defense, if required by the other side. I would abolish the affidavit, as it adds nothing to the statement.

In the case of a foreclosure of a mortgage, it is oftentimes desirous that the mortgagee should be put in possession of the mortgaged premises as soon as may be. Yet under our practice, he may be obliged to wait for about six months before his case can be entered in Court, and under the ordinary rules he does not obtain judgment until the last day of the term. Then there is a delay of sixty days before he can obtain a writ of possession. Altogether, it causes a delay of from six to nine months, during which time the security may be greatly impaired. Of course, this does not take into consideration the year's equity of redemption.

If the statutory laws were amended, and rules adopted as mentioned above, I believe that the work of our Superior Court would be lessened, and that it would be in the interest of real progress. Oftentimes the case would be disposed of before the term opened. There are many instances wherein a plaintiff must wait six months before his case can be entered in Court, and then a continuance or a congested docket causes another six months' delay. I have received many complaints from out-of-the-state clients that there was too much delay between our terms of Court.

Another idea in this connection and one which seems to be in line of wise progress, is that of a Small Claims Court, or

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a Conciliation Law. The Small Claims Court has been established very recently by Massachusetts, and it has not been in operation for a sufficient time to enable one to judge of its advisability. The Conciliation Law is a western idea. It has met with great success in the cities of Minneapolis, Minn., and Cleveland, Ohio, and was recently adopted by the State of North Dakota. In that State, it applies to controversies involving less than two hundred dollars, and no process can issue until an attempt at conciliation is had. The conciliators are appointed by the judges of the Superior Court, and are removable at their pleasure. Counsel are not permitted at the conciliation conferences, and if the respondent party does not appear, or appearing, no agreement is had, then they are at liberty to litigate to their heart's content. It is said that the provisions of the act will practically eliminate cost and delay, and will effect the smoothing out of ugly feelings, or better, their prevention, and encourage an attitude of greater respect for our Courts, which is needed throughout the country.

In regard to the elimination of attorneys, this is something to which I cannot agree, as it might work a hardship on out-of-the-state parties, or those who live at a distance from each other. However, it is a subject that will merit investigation and consideration.

Again, the subject of contingent fees should receive the attention of our higher Courts. It is well known that practically every collection that comes into a lawyer's office is in substance the basis of a more or less champertous contract. In fact, this Association has adopted a fee bill for this class of work, establishing a graduated system of contingent fees. Most of our personal injury suits partake to a greater or less extent of the same character. Many other suits are touched with the same stigma, and this condition is simply tolerated. I presume some older members of the bar have taken contingent fees, and it is no more than to be expected that the younger men will adopt

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the practice. It is all very well for men with a substantial or lucrative practice to lecture against champerty or contingent fees, but consider, if you please, the young lawyer, one perhaps who has struggled and worked his way to admission. When he opens his office, he cannot expect and does not get the better class of business. Clients who can pay do not select him, and yet he must live. He must also get cases to establish his reputation. Is it not asking too much of him to reject a contingent fee? Indeed, in many cases, a poor litigant would be without redress if it were not practiced. And supposing the litigant has property, should he be obliged to jeopardize it in a law suit for a claim for damages to which he feels he is entitled? If, for instance, a man is run into by an automobile and is permanently injured and disabled, must he be obliged to put his home, his farm, or his savings account into the pot to be litigated, or should he not be allowed to make a contract with his lawyer for a larger fee, contingent upon recovery? I believe it is not only a prudent thing to do, but a right and logical one, particularly under the present-day circumstances.

Now we know that the law does not countenance contingent fees, that they are looked upon as being unprofessional, and we will drift along in this equivocal situation until some younger member of our profession, hungry for a real case, ventures too far, or meets with an ungrateful client. There will be a complaint against him for taking undue advantage, litigation, public criticism, coupled with court censure, or possible suspension from office, and the man's career may be ruined. Should not either our Supreme Court or the Superior Court take cognizance of the matter, recognize that it is a practice that has come into general use, and make such rules in regard to it as to fees, disbursements, etc., that may be fair to the litigant and to the attorney, so that there may be no suspicion of dishonor in the mind of the attorney, or in that of his brothers toward him, and no sense of injustice in the mind of the client?

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I was greatly impressed at our meeting last year by the remarks made by our then President, Judge Snow, and firmly resolved that I would cause to be put into effect the many admirable suggestions that he made, but I have found that it is much easier to resolve than to execute, that it is not only difficult to get one's own self out of long indulged in habits, but it is much more difficult to get one's neighbor out of such habits.

During the last session of the General Court, I called a meeting of the Executive Committee at Concord. Not one attended, and only one member wrote to me excusing his absence. I did not take this as meaning any discourtesy to myself, or to the office, but laid it wholly to the habit in which these gentlemen have long indulged, *i.e.*, let the president or secretary do it.

I have also written individual letters to these gentlemen urging that they see to it that every lawyer in their respective counties join the Association. I think I can say that some of them have done something along this line, for the membership has been increased by about fifty.

Also in accordance with the by-laws of this Association, I appointed a legislative committee of members of the General Court, with Judge Snow as chairman. I believe it held one meeting, but owing to other and more important duties devolving upon the members, nothing of consequence was accomplished. However, we have made a beginning, for to know the things we desire is a sure sign that we will eventually obtain them, and I trust that in due time the activities of our Association will be pointed to with approbation and our example followed by all the associations in the country.

I have received from the Honorable Counselor Masujima, of Tokyo, Japan, President of the International Bar Association, an invitation and request that this Association affiliate and register with that Association. It purposes to unite in membership all bar associations of the Occident and Orient with the object of promoting the cause of

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Justice among nations, through the co-operation of the lawyers of the world.

The letter recites:

"We are very anxious that your Association should join us, and so influence other associations to add their membership. Such unanimity in service would stimulate our professional brethren the world over, and encourage all to co-operate in the work of the International Bar Association.

"Should you see fit to join us, our common effort to build up the great edifice of international justice, to propagate the true principles of democracy among all nations, would be so much strengthened. The International Bar Association thus reinforced should acquire in time authority to dictate the standard of international justice to be enforced by all the sanctions of civilization.

"It is our earnest hope that, when the world comes to realize the power of the bar in the moulding of civilization, the International Bar Association will become recognized as an important element of the society of nations, so that its power may bring together the East and the West in better and more perfect understanding and may further the cause of justice in the interest of the peace of the world. The benefit thus conferred would be equal to, if it did not surpass, that of the League of Nations, the success of which was doubted by many from the first, and as to which the hopes of the majority may not impossibly, it now appears, end in great disappointment."

I heartily concur in the sentiments expressed by the Honorable Masujima and am in favor of and suggest that this Association affiliate with the International Bar Association, if after consideration it should appear advisable, for I feel that such an association can do more for international justice and international peace than any diplomatic conference ever did. If all controversies between sovereign nations were submitted to a tribunal of lawyers or judges with directions and authority to decide the matter in accordance with justice to all concerned, general warfare would go out of fashion. Under the present methods, negotiations are carried on with the purpose of making conditions advantageous to your own and disadvantageous to the other country, and finally, when the slaughter is over, and the statesmen gather about the peace table, the

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question is not what is just, but how can we place the vanquished nation even at a greater disadvantage.

The last great war should teach us that never again can we depend on the good sense of statesmen or the provisions of treaties to keep us out of war; neither can we depend upon the influence of civilization as such, nor upon the interest of organized capital, labor, or the churchmen to the same end.

Let us hope that a body of lawyers or a committee therefrom, trained to seek justice and to weigh the various considerations that enter into a controversy may be more efficacious in this respect.

It is also grateful that this communication should come from a distinguished member of the Japanese bar, for, as you all know, there are questions now pending between his honorable country and our own that will have to be settled by a verdict in accordance with honor and justice rendered by men devoted to these principles, or by the decision of the sword.

Of course, the Hague Tribunal is designed to accomplish just this purpose, but you know it has failed to bring about the great expectations hoped for, and a general disposition of the bar throughout the world certainly could not help but have an active and beneficent influence.

The Honorable Counselor Masujima states in his communication that he intends to be present at the meeting of the American Bar Association at Cincinnati, and would be pleased to meet the representatives of this Association to discuss the advisability of affiliating.

I have also received a communication from Honorable Clarence A. Goodwin, Chairman of a committee of the American Bar Association, to encourage the incorporation of state bar associations for the purpose of enabling them to exert a more definite control over the bar in general. I do not see the need of it in this state, but as he stated that the influence of this state would be helpful to the proponents of the idea in other states where the necessity

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is more apparent, it might be well to have a committee investigate his suggestions.

I have also received a request from the Honorable Stiles W. Burr, Chairman of the Conference of Bar Association Delegates, which holds its meeting in conjunction with the sessions of the American Bar Association at Cincinnati, that this Association appoint a delegate or delegates to represent it at the said conference. This has usually been done, and I suggest that our incoming president appoint such delegates.

SUGGESTIONS.

First. I suggest that a committee be appointed to consider the subject matter of changes in the statutory law and rules of court to avoid the delay caused by the long interim between terms of court, and to report at our next annual meeting.

Second. That a committee be appointed to investigate the advisability of establishing a Small Claims Court, or adopting a Conciliation Law, and to report at our next meeting.

Third. That a committee consisting of the Justices of the Supreme and Superior Courts be appointed to consider the subject of contingent fees and to report at our next meeting.

Fourth. That a committee consisting of those members of this Association who will attend the meeting of the American Bar Association at Cincinnati, be appointed to confer with the Honorable Counselor Masujima, President of the International Bar Association, for the purpose of obtaining information about that Association and to report their conclusions and recommendations to the President of this Association.

Fifth. That a committee of five be appointed from the ex-presidents of this Association, to consider the question of its incorporation.

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And now in conclusion permit me to thank you for the great honor you have conferred on me by selecting me to the office of President of your Association. To be selected as the head of this Association is such an honor that rarely comes to an humble member of the bar, and it necessarily testifies that the person so honored enjoys the esteem and confidence of his brothers.

Having enjoyed this honor I cheerfully go forth knowing that no effects of adverse fortune or decision of an adverse court can ever convince me that my career as a lawyer has been an entire failure.

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SHERMAN L. WHIPPLE

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Problems Ahead for Courts and Lawyers.

BY SHERMAN L. WHIPPLE, ESQUIRE, OF BOSTON, MASSACHUSETTS.

Mr. President, and my Brethren of the New Hampshire Bar:

On an occasion like this we can speak on hardly any theme without thought of its relation to recent events which have brought about such changes in the world. The war is still, to most of us, something like an ugly dream. We can even now hardly realize that it has been, and we with difficulty adjust our thoughts and actions to the new situation and the new relations. The old landmarks have changed and disappeared, and as yet we can hardly tell just where we are.

It is too soon as yet to measure or define the changes of the war, or to determine its influence on the future of society. We are even now not quite sure that the worst is behind us, and that civilization is safe. But there is one thing of which we have become sure, and which every day is becoming more and more fixed in our consciousness; and that is that the war has left in its wake difficult and perplexing problems with which we must deal, and that the days in which we are now living are those in which the salvation of orderly government and of our modern civilization requires the best that is in us.

As citizens, we are interested vitally in all the problems, governmental, social, industrial and economic. But, as lawyers, we are especially interested in those which have to do with maintaining the supremacy of law and with a con-

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tinuance of the orderly administration of justice. It is our special task to deal with that spirit of unrest and disorder and defiance of law which has been observed in certain quarters with anxiety and a certain measure of alarm. It is scarcely too much to say that the preservation of society and of our governmental institutions—indeed our safety as a nation—depend in very large measure upon the ability of our courts to administer justice according to the highest standards, and to maintain public confidence.

It is well, therefore, especially in these critical days, to pause in our busy lives to take account of the general situation, to find our bearings, to see whether we, as lawyers, are working along right lines, and whether our judicial system is ready and fit for what is ahead of it.

We cannot ignore the fact that our courts and our judicial system have been under criticism for some time. Some of these criticisms have been special and directed to particular features, and some of them have been merely a part of the general criticism which in recent years has been directed against most of our institutions. The last quarter century has been an era of question, of criticism, of proposed reform, of destruction of the old, and creation of the new. A spirit of popular unrest has pervaded our entire social and governmental structure. No existing thing or institution escaped its general challenge, and it was but natural that our courts and system of administering justice should have come under fire. The criticisms at the outset, at least, were largely general. They represented a general dissatisfaction with the administration of justice, rather than criticisms of specific things. Their notable characteristic was the emphasis and often the bitterness of the expression of popular disapproval.

But this is not true of all the criticisms which were uttered. Many came from sources so authoritative and were so calmly and clearly thought out and expressed, that they made a distinct impression upon those concerned in the administration of justice. It is not too much to say

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that the emphasis of popular disapproval was such as to cause a genuine alarm; for no criticism is so serious or alarming as the criticism of a nation's administration of justice.

While criticism has by no means disappeared, it has obviously abated, in a measure at least, and has been for some time much less emphatic in its expression. The reason for this is not quite clear. It is undoubtedly due, in part at least, to the fact that the courts, both the judges and the lawyers, have been responsive to public opinion and have heeded criticisms where they had a real and just basis. There can be no doubt that many of the things which have been heretofore the basis of popular criticism have been in large measure corrected, and that our system of administration of justice is, though slowly and conservatively, yet surely, approaching higher standards, and meeting more distinctly with popular approval. But without doubt, the abatement or suspension of popular criticism has been chiefly due to the fact that the minds of men have been diverted and absorbed by the great happenings of the World War and by the problems which that war has left us.

Whether popular criticism will revive when conditions are again normal, it is impossible to predict; but whether it be due to revive or not, it is well for us, as lawyers, as officers of the Court, and as those chiefly having to do with the system of administration of justice, to consider carefully whether just causes of criticism still remain—and if so, to see whether we may not reform them ourselves, without the spur of popular criticism to stimulate our attention.

There was one criticism directed at our judicial system which was carefully thought out, fairly and candidly discussed, and endorsed by distinguished men. That was the charge that our courts were usurping authority; that they were encroaching upon and dominating both legislatures and executives; that the judges were assuming to make law, and, by the exercise of a power to declare legis-

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lation unconstitutional, defeating laws which the Legislature enacted; and that the things which they were doing were in the interest of a class and against the true public interests.

It was in this connection and during these discussions, that the term, "judge-made" law, first came into common use, as designating the laws which were supposed to be made by the judges or by the courts, rather than by the Legislature; and the term "judicial veto," as applied to the decisions of the courts declaring invalid laws enacted by the Legislature, on the ground that these laws violated the terms of the Constitution.

This charge deserves careful and fair consideration. It aroused public attention and interest, and has met with a fair measure of public approval. It was endorsed by Theodore Roosevelt. We have not forgotten the drastic remedies which were seriously proposed in this connection. The recall of judicial decisions—probably because its significance was so little understood—was at first hailed in certain quarters with great delight. Naturally, every disappointed litigant favored it; for before it was clearly comprehended there were those who believed that the doctrine meant that every decision of every court that failed to meet with popular approval might be recalled and nullified by popular vote. It was some time before the proposal was popularly understood to apply only to those decisions of courts of last resort which were essentially political.

It was in this same connection that the proposal was made that the new doctrine of recall of public officers should be applied to judges whose decisions might not meet with popular approval. It was also urged that all judges be selected by popular election rather than by appointment, and that easy methods be provided for impeachment, in order that the courts and the judges might thus be made amenable and answerable to the popular will.

Because this charge against our judicial system has aroused such intense interest, both popular and in legal circles, and because I believe its discussion is likely to be the

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subject of political controversy in the immediate future, I believe it worthy of our consideration now.

The bald pronouncement that courts actually make law, or that they veto laws enacted by the Legislature, came as a distinct surprise to the public, and measurably so even to the profession. In the discussions and criticisms to which I have just referred, it was hailed as a new discovery—and an important one. It was implied in the expressions of popular criticism and disapproval, if not definitely charged, that this procedure of the courts was a matter of recent origin; that it was a new usurpation of power, attended with a sinister purpose to destroy that balance in the exercise of powers between the executive, the legislative and judicial departments upon which our system of government is supposed to rest so securely. It was plausibly asserted, and easily believed, that the nullification by the courts of statutes represented a defiance of the people's will, and that thereby the courts were assuming to override the Legislature and overthrow the laws which the people themselves had made or authorized, and substitute therefor those of the courts' making, in which the people had no hand.

The courts were unfortunate in their defenders. While those who made charges did not distinctly formulate them, those who attempted the defense of the Court took a false position. They asserted that the judges did not make law; and they restated in support of the proposition that hoary legal fiction that the courts only declared what they found the law to be and interpreted it. They asserted that the judges really did not veto legislation or declare it invalid, but merely decided that certain enactments of the Legislature did not accord with the fundamental law or compact of the Constitution.

These assertions were unwarranted; the very fact that they could not be supported greatly heartened those who attacked the exercise of these powers by the courts.

The assertion that the judges make law and in effect veto laws made by the Legislature is true. We, as lawyers,

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know that the courts are not only doing it constantly, but that they have been doing it for years.

The question therefore is not, whether the courts have been doing these things, but whether they ought to continue to do them; whether the interests of the public are best subserved by the courts' continuing the exercise of these functions, which, on the face of it, appear to be an encroachment on the domain of legislatures, and a usurpation by the Judiciary of functions enabling it to dominate the legislative and executive branches of the government.

As to the lawmaking power of the courts: The fact is, of course, that the courts are constantly making law, and have been doing so for centuries. The law which controls our daily action, which comes most intimately into the lives of the people in their everyday intercourse, is substantially all law which was made in judicial decisions and never enacted by legislatures. "Judge-made" law means nothing but our common law,—the very inheritance upon which our judicial system may be said to rest.

Just how or when judges first began to make law by their decisions, or, in other words, just what is the exact origin of the common law, no one can now say. Its history is lost in the mists which surround and envelop its beginnings. It first emerged in history in the records of reporters of decisions, whose reports and writings mark an era of growth and development which extends from Glanvil and Bracton, and Britton and Fleta, through Littleton and Coke, and Blackstone and Kent, to these modern days of a multitude of reporters of the decisions of almost a multitude of courts.

The common law has, indeed, been defined as a collection of maxims and customs existing from "time whereof the memory of man runneth not to the contrary." But these maxims and customs of a simple and primitive people became established as law only when they received the sanction of judicial opinion and decision, and thus became recorded and established as rules of action laid down by a

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superior authority to which the subject people thereafter were bound to conform.

As was said by Blackstone in his Vinerian lectures to the gentlemen of Oxford University, in his description of the origin of the laws of England,—

"And thus much for the first ground and chief corner stone of the laws of England, which is general, immemorial custom or common law, from time to time declared in the decisions of the courts of justice, which decisions are preserved among our public records, explained in our reports, and digested for general use in the authoritative writings of the venerable sages of the law."

None of what is strictly our common law ever originated in a legislature. It rests for its authority upon judicial decision. It is "judge-made" law. It is in this very point that our own system of law differs from others. Most if not all other systems are founded upon the outgivings of lawgivers, and rest for their authority upon the edicts of a supreme and lawmaking ruler, or spring from a compact, or covenant or code, adopted by a legislative body assembled for the purpose, or proclaimed by imperial decree.

The common law alone resting upon judicial decision was created without either imperial edict or legislative enactment.

The making of law by judges, therefore, is the essence of the English and American system of lawmaking and the administration of justice. When critics criticize law as "judge-made," they criticize our common law—they criticize the foundation of our judicial system.

To change would be to change our system—to change or abolish the common law, the growth of centuries, the pride of English-speaking people.

Ought we thus to change or modify our system? What are the reasons, if any, for such action?

At the outset it must be conceded, I think, that our system is not perfect—that it has its defects. Let us consider them.

The most serious disadvantage of our system, as it seems

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to me, is the uncertainty of the law. A client wants to know what the law is before he acts, to guide his action. He consults a lawyer; he expects to have him give a clear, definite, simple and explicit statement of the law. He is entitled to have such a statement, and there ought, of course, to be some place where it can be found.

But under our system, if it be a case of novel impression, if the exact point involved has not been decided by the Court, neither his lawyer nor anyone else can tell him what the law is. He can only guess. He can cite decisions which, as precedents, bear upon the question; but he is still uncertain. He may give a learned opinion, filled with citations from cases, but at the end he in effect says, "The law may be so and so, and it may be the other way." No one can tell until the Court has spoken.

The judges cannot be consulted in advance. If the client is to proceed, he must take his risk. The Court will tell him whether he was right or wrong after he has gone ahead, and when the opinion may be of little or no use to him.

So, if the client proceeds with a transaction and later consults his lawyer to see whether he has proceeded rightly, he finds his lawyer in the same uncertainty. The lawyer has an opinion, but he is by no means sure that he is right. He thinks perhaps the client is right—or perhaps he is wrong. The client finds that his opponent has consulted a lawyer who is in the same state of uncertainty as to the law. That lawyer gives an opinion in favor of his own client. But both of them agree that neither can be sure what the law is until the Court decides the question by litigation, which may be protracted and is pretty sure to be expensive.

So there is under our system, in a case at least of novel impression, no simple and certain way of ascertaining what the law really is, or whether one has actually violated some rule of law.

That this defect in our system is not fanciful or of unusual occurrence, is shown by the vast amount of litigation

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with which our appellate courts have to deal. This litigation occurs largely because the lawyers on opposite sides do not know what the law is, and differ in their opinions as to what the Court is likely to declare it to be. Each lawyer is confident in his own opinion, and in his belief that the precedents sustain him. But of course in every case one or the other of the lawyers is wrong, and it takes a trial in court, and perhaps successive appeals, to show what the law is.

But the uncertainty does not end with the difference in the opinion of the lawyers; the presiding judge may rule one way or the other; but the appellate tribunal often in turn reverses the presiding justice; while another appellate court may again reverse the decision of the last court. While in the court of last resort, what the law actually is may be determined by the opinion and decision of a majority only of the judges, a vigorous dissent of a minority of the Court accentuating the uncertainty of the law in its final declaration.

Another and scarcely less serious defect is the cost of ascertaining the law. No lawyer can state to a client promptly and easily an opinion upon which the client may act, even with reasonable safety, except regarding simple and elementary principles. There is nowhere that a lawyer can find a concise, certain, and simple statement of law. He must institute a laborious search of precedents. It may take days of investigation, running back into decisions rendered centuries ago. With all the aids which we receive from digests and encyclopedias, yet the task of rendering an opinion upon which a client may depend is laborious for the attorney and expensive for the client.

But even thus, after he has paid for his opinion, the client is not assured of his position. He may still be obliged to go through litigation in a series of courts, only to find that the opinion of his opponent's lawyer, and not that of his own, is the correct one. To be sure, the suitor has the sat-

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isfaction of knowing that he has established his particular point of law as a guide to his fellow citizens for all future time. But this satisfaction must be slight as compared with the enormous loss which he has suffered because he could not find out with certainty what the law was.

I do not hesitate to say that it is a reflection upon the administration of justice that one who seeks to ascertain what the law is, and to obey the law, should, as an individual, support the enormous cost of determining what the law is; while the community, which is benefited by knowing the law, bears a comparatively small proportion of the expense.

It is an obvious corollary of the propositions to which I have called attention, that the uncertainty of the law, and difficulty and expense of determining it, give an enormous advantage to the rich litigant, over the one of limited means. A man with a cause perfectly just may be, and frequently is, unable to undertake the expense even of such an examination of the law as is necessary in these times to secure an opinion as to his rights; to say nothing of the tremendous expenses of litigation as a cause goes from court to court in its onward progress toward ultimate decision.

This situation lends color to the criticism and assertion which are frequently heard, that justice has its price; that the decision goes to those who can afford expensive lawyers to aid in securing it; and that justice to the impecunious suitor, even if he gets his case into court, is not of the same quality as that to the suitor possessed of means to employ those who are skilled in the law, and who can pay the expenses for the time required in research of cases and precedents which may bear upon the controversy.

Such a situation places a premium upon the skill and industry of lawyers; for obviously those lawyers who are most skilful and industrious are more likely to win the decision than those who have not the skill, or are unwilling to make the sacrifices.

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But justice should be without price, open alike to rich and poor. It should depend upon truth and the merit of the cause, and not upon whether one litigant or another may be able to secure the abler lawyer.

But in fairness it should be said that the effect of the conditions to which I have referred is largely mitigated by the action of the courts and our profession; for if it can be possibly done, a just cause is not permitted to fail by reason of the poverty of the litigant.

But that just causes do fail, are never brought into court, or even to the attention of a lawyer, is nevertheless a fact, and this is due to things inherent in our judicial system that are beyond the power of the judges or of lawyers to control.

Another criticism often heard is that the exercise of a lawmaking power by the Court is inconsistent with our theory of government and an encroachment on the functions of the Legislature. Superficially, this is so. It is quite true that our Constitution provides that the Legislature shall enact laws, the Judiciary interpret, and the Executive execute them.

But however much the courts may have encroached upon the Legislature, there is this to be said: they have done exactly this same thing from the very beginnings of our judicial system, centuries before our written Constitution was adopted, and before the theory of our government had been established, or even thought of. The lawmaking powers exercised by our courts are far older than any provision of the Constitution defining the making of law as the Legislature's exclusive function; and it is too obvious to permit of debate that our Constitution must be construed in the light of this history.

But after all this encroachment upon the legislative function is more superficial than substantial. For it is always within the power of the Legislature to alter the law which is made by a decision of the Court. The Legislature

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is thus actually supreme in the field of legislation, and the laws framed and declared by the Court are always subject to legislative revision.

I shall not attempt an analysis or definition of all the advantages of this system of ours, which has stood the test of centuries; but to my mind its great merit lies in the fact that the laws which the courts declare are formulated by experts. They are the products of minds trained in the law, educated in the study of the law, experienced in its practice. They are formulated by men who concentrate their attention and energy solely upon the determination of what rule of action will be for the benefit of the community as a whole, unaffected by any other influence.

The result has been the creation of a harmonious and consistent body of law, free from the influence of ignorant prejudice, not to say corruption, which sometimes has found expression in legislative enactments.

While, therefore, conceding that our system is not without defects, its merits far outweigh them. The common law, the "judge-made" law, is too firmly fixed as the basis of our judicial system ever to be disturbed. It must continue to stand as the distinguishing feature of the administration of justice in English-speaking nations. It is not merely a collection or body of maxims and customs which can be laid aside at will. It is a scientific development of a system of law which is part and parcel of the spirit of Anglo-Saxon institutions. To its upbuilding have been contributed in succeeding centuries the products of the greatest judicial minds of English-speaking people. It will continue to stand as a memorial of great lawyers, and as the lasting foundation of English and American jurisprudence.

Turning now to the other branch of our discussion, ought our courts to continue to annul the enactments of our Legislature?

This question presents a unique feature not only of our

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judicial, but governmental structure. Among no other great people is any such power exercised by courts. In England, from whom we inherit our jurisprudence, it would be unthinkable that courts should declare invalid an act of Parliament. In the English governmental system Parliament is supreme. Its enactments are subject to no revision. The function of courts is solely to interpret the law.

But England has no written constitution; and it is because of our system of written constitutions that the courts exercise this power.

When we adopted a constitution, it became our supreme law. The Executive, the Legislature and the Judiciary were subordinated to act in conformity with its provisions. The Legislature was authorized to enact only such laws as were in accord with the Constitution.

But how and by whom is to be determined what was, and what was not, in accord with the Constitution?

Could the Executive assume authority to determine whether what he himself did was or was not in accord with the Constitution's provisions? Had the Executive the authority to say whether a legislative enactment was or was not in accord with the Constitution? Could he say whether a decision of the Court was or was not constitutional?

On the other hand, could the Legislature determine that some action of the Executive was unconstitutional and bring him to book therefor? Or could the Legislature direct the action of the Court in accordance with its own views as to whether the decisions of the Court were or were not in accord with the Constitution?

Or was the authority to interpret the Constitution and the action of the Executive and Legislature in respect thereof, invested in the courts?

Strangely enough, the original constitutions which we adopted contained no provision on the subject.

When the question really arose, the whole theory of a written constitution was in peril. It was manifest that if the Executive were to declare what was and was not con-

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stitutional, either in his own acts or those of the Legislature and Judiciary, he would become a dictator; for the power to interpret the Constitution carries the power to destroy it.

It was equally evident that if the Legislature should decide whether its own enactments were constitutional or not, it would place the Legislature above the Constitution, and render its restrictions nugatory.

In this crisis, and under circumstances of grave doubt and uncertainty, the courts of the nation have assumed a power which no other court of any civilized nation had ever before assumed,—the power to determine whether a legislative enactment was binding as law, or was wholly nugatory and void. I have said the courts assumed the power. It might better be said that this duty was thrust upon the Court. It was the only tribunal in whose decisions on the subject the general public would acquiesce; and without some tribunal to determine these questions, government under written constitution was a failure.

So it has come about that the public has for years acquiesced in the assumption of this power by the Court. Acquiescence, however, has not been unanimous. It was Andrew Jackson who said, when this power was first assumed by the Supreme Court of the United States,—

"John Marshall has made his decision. Now let him enforce it!"

It is the exercise of this power in recent years that has caused the severest criticism of the Court.

The reason is obvious. The function performed is not judicial, but legislative and political. The decision is not of a controversy between individuals,—as a decision of the Court usually is,—but rather the declaration of a policy in respect of social, industrial, or governmental questions, upon which there may be, and frequently is, acute controversy between large parties or bodies of men. The Court, therefore, in nullifying legislation which frequently has been accomplished in the heat of political controversy, naturally incurs the bitter resentment of the defeated party.

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Naturally the offended faction immediately raises the question whether the Court has authority to exercise such a power, and if so, whether it is wise that such authority be continued.

It is, of course, frequently asserted that the action of the Court is not legislative in character,—that the Court does not make these policy-forming decisions on considerations that influence a legislature in its enactment, or an executive in approval of a measure. But this plainly is not so. One has only to read these decisions to realize that they rest upon political or social rather than judicial considerations. Most are majority decisions, and, so far as legal principles are concerned, could as well be decided for as against validity. They are decided plainly according to the belief of a majority of the justices as to whether a declaration of validity or invalidity is in the public interest.

It is evident that this power of invalidating the acts of the Legislature places the Court in a position completely to dominate, if they so will, the legislative and executive branches. It is a tremendous power, and the growing frequency of its exercise has given just cause for anxiety. This is especially felt in those isolated cases where single judges, in terms but scantily respectful, have declared invalid a law passed after extended discussion in response to a clear public mandate.

It is certainly unfortunate that our courts are called upon to deal with and determine questions involving class prejudices and hatreds, or political or social questions which are involved in dispute. But on the other hand, it is a duty the performance of which by some tribunal was essential under our form of constitutional government, and the courts could not escape it.

However much we may regret the results to the Court from the exercise of this power, the way out of the situation is not easy to see. A change would require a reform of our constitutions so radical that the remedy might prove worse than the thing it sought to correct.

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After all, it must be said that the courts highest in authority and reputation have exercised this power sparingly and with reluctance. They have usually resolved doubts in favor of the validity of legislation. Although not responsible directly to the people, they have on the whole heeded the popular view in recognition of the fact that in every democracy a majority must ultimately control.

While the question is perplexing, and will undoubtedly be further considered and discussed, apparently for the present, at least, we must look forward to the spirit which the courts have already shown, as our safeguard in the exercise of legislative powers by the judiciary.

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REVIEW OF THE WORK OF THE GENERAL COURT OF NEW HAMPSHIRE AT THE 1921 SESSION.

BY WILLIAM N. ROGERS OF WAKEFIELD.

The New Hampshire Bar Association at its last annual meeting at Newcastle adopted the following by-law:

"ARTICLE 6. Biennially, before or at some time during the session of each General Court, it shall be the duty of the president of this Association to secure the services of, and to appoint, one or more members of the Bar—preferably some member or members of the Judiciary Committee of the House or Senate—to prepare and submit at the next annual meeting of this Association a review of the work of the General Court.

"At said annual meeting it shall be the duty of the president to appoint a committee on legislation consisting of three members, whose duty it shall be to consider the matter of proposed legislation and to submit at the next annual meeting a report with recommendations for the consideration of the Association in open forum—notice of the subjects to be discussed being given in the call for the meeting.

"Special meetings of the Association may be called at the request of the majority of said committee, upon approval of the president.

"It shall be the duty of said committee to represent this Association before the succeeding Legislature and to submit to that body the recommendations of the Association, if any."

The adoption of this by-law was the direct result of the excellent and thoughtful address of Mr. Justice Snow, our then president, revealing as it did the fact that this Association was not fully performing its constitutional duty "of maintaining the honor and dignity of the profession of the law . . . and increasing its usefulness in promoting the due administration of justice."[1] It was the hope of our retiring president, a dream which may yet be definitely

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realized, that this Association, as best expressed in his own words, might "take a greater interest in the initiation and guidance of legislation in New Hampshire."

In accordance with the terms of this by-law, I shall endeavor to give you a brief review of the work of the General Court of 1921. No satisfactory or comprehensive review of the work of the lawmaking body of this State can, I am sure, be of any substantial assistance to the members of this Association unless it includes not only a discussion of the measures enacted into law, but also a summary of those which failed to receive the sanction of the Legislature. Of the 527 bills and joint resolutions introduced at the 1921 session, 283 became laws and 244 failed of passage. An even 200 of the bills passed were public acts directly affecting by amendment, repeal, limitation or extension, 181 of our previously existing statutes and session laws. It is interesting to note that of the first 100 acts 68, or more than two-thirds, were express amendments of prior legislation. It is also significant that the last Legislature found it expedient to repeal or amend six of its own acts. And yet it has been said that no legislature in the present generation sat so long, did so little harm, killed so many bills, headed off so many appropriations, and inflicted so few changes in the rules and regulations of existence, as did this, the 197th session of the Great and General Court.

Few laws were enacted by the Legislature of 1921 which can be considered of more than passing interest to members of the legal profession. No reactionary or radical measures were placed upon our statute books. Perhaps the most extreme departures from the normal, conservative legislation of our State were the enactments of a law entitled "An Act to Insure to the Citizens of New Hampshire the Benefits of the Established Standard Time," and the repeal of the usury law. Certain important changes, however, were made in our tax laws. By Chapter 70 a tax of two per cent was imposed upon the transfer at death of

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all personal property within the jurisdiction of the State belonging to non-residents. The purpose of this law is obviously to provide additional revenue for the State. It makes any interest in personal property of any kind owned by non-residents taxable for the use of the State, excepting only stock in New Hampshire corporations when at the time of the non-resident owner's death all the corporation's business is carried on outside the State. Minor changes were also made in our existing inheritance tax law, with a design to safeguard the rights of the State and to minimize the opportunity for fraud in concealing certain kinds of property so as to exclude it from the payment of legacy and succession taxes. These changes were found desirable by the department charged with the execution of the law and they were adopted upon the recommendation of the assistant attorney general. An example of the kind of protection given is the provision that no person except the administrator or the executor of the deceased shall, without the written consent of the state treasurer, be allowed to remove any of the contents of any safety deposit box which such deceased person had the right to use.

An important measure designed and enacted to provide for increased revenue to the State is the new Motor Vehicle Law which becomes effective January 1, 1922. Fees for the registration of all motor vehicles are hereafter to be determined according to the weight of the vehicle rather than by its horse power as at present. This method of fixing the fees for registration is the most reasonable and scientific yet devised and is a distinct departure from past methods now generally regarded as both impracticable and in many cases unjust. The new policy is designed to make it possible for the cost of the construction and maintenance of our highways to be met by the traffic they bear. It is estimated that the immediate effect of the operation of this new system will be to increase the revenue of the State Motor Vehicle Department by from thirty to forty per cent, this estimate being based on the approximate number of

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cars already registered and the registration of which may reasonably be anticipated during the current year.

By virtue of an amendment to Chapter 245 of the Public Statutes, actions for libel, trespass to the person, and malicious prosecution, may now be begun by trustee process. This change was largely effected by reason of the difficulty formerly encountered in obtaining service in actions brought for libel published in newspapers printed in foreign jurisdictions.

Appeals from the reports of commissioners appointed by the Probate Court to examine and allow claims against an estate administered as insolvent, may, under Chapter 8, be brought in the county where the appellant lives. This is simply an extension of Chapter 216 of the Public Statutes providing that transitory actions may be brought in the county where either party resides.

The repeal of the usury law provoked perhaps more widespread comment and criticism throughout the State than did any other action of the 1921 session. With a prominent banker as the governor of the State, and with another distinguished member of our profession generally understood to be especially interested in the banking interests of his own city as the president of the Senate, an act was passed providing that "In rendering judgments, and in all business transactions where interest is paid or secured, it shall be computed and paid at the rate of six dollars on $100 for one year, unless a different rate is expressly stipulated in writing."

As a result of this act, numerous charges were made, particularly by members of the grange and allied farmer interests, to the effect that the inception, growth and culmination of this law were reflected in the activities of the banking interests of the State. After this act had passed both branches of the Legislature and become a law by virtue of the Governor's signature, a desperate effort was made to secure its repeal. This attempt was made in the last hours of the session when a bill to repeal Chapter 121

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passed the house by a large majority. The Senate, however, refused to change the position it had previously taken and the law remained upon the books. It was openly charged by some of those interested in the attempt to secure the repeal of the act that it was railroaded through the House and that the members had no opportunity to take intelligent action against it. As a matter of fact, the bankers of the State must be exonerated from the charge that the repeal of the law was due to their efforts in its behalf. The Journal of the House shows that this bill, House Bill 91, was introduced on January 19 and referred to the Committee on Judiciary. Thereafter it was advertised for a hearing at least twice under the rules requiring twenty-four hours notice, and at neither hearing was there any appearance either for or against its passage. Finally a third hearing was had at which appeared advocates in its favor, but none in opposition. The committee, after full discussion in executive session, reported the bill favorably, and it passed the House in the usual course of business. This act is in line with the progressive and enlightened legislation of our sister states on the subject of interest and usury. The general statute against usury has long since outlived its usefulness. The prevailing rates at which money may be bought and sold in the open markets of the world has been, and will continue to be, fixed by the same economic factors which are constantly regulating and adjusting our commercial and industrial activities. These factors dominate to a great extent both internal and international commerce, whether it be of money or material, and largely without regard for, or in spite of, specific legislation.

In my opinion, the widespread protest which was raised against the repeal of the usury law was wholly uncalled for. It created a tempest in a teapot. I do not believe that the higher rates contemplated by the new law will be used to extort excessive interest from the borrower. Certainly no honorable banking institution can afford to take the chance. Again competition and reputation will serve as

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effective weapons in putting out of business existence the man or institution which is guilty of bad faith in this matter so vital to the public welfare. If my conclusions are wrong, the Legislature of 1923 will have full opportunity to correct any iniquitous mistakes which its predecessor may have made.

Among other acts of public interest the Legislature enacted a law regulating and limiting the investments of savings banks; it provided for the election of selectmen to hold office for a period of three years; it officially recognized the science of chiropractic by providing for the regulation of the practice thereof; it provided for the exemption of disabled soldiers of the World War from the payment of poll taxes; it enacted strict measures for the maintenance and protection of the State's highways, naming the Merrimack Valley trunk line in honor of the most distinguished son of our commonwealth, Daniel Webster; and it made large appropriations for the protection of public health and morals. It also reduced the State tax, retained the Sunday law intact, relieved women of the duty to serve as jurors, enacted a new pharmacy law, authorized a state publicity board, a state veterinarian, and woman factory inspector. It extended the policy of paternalism to the city of Manchester by raising the debt limit and by providing for state appointed commissions to supervise and control the city's highways and finances.

Recess commissions were authorized to consider the following matters and to report their recommendations to the next Legislature: (1) the divorce statutes; (2) employers' liability and workmen's compensation; (3) water power conservation; (4) the 300th anniversary of the settling of New Hampshire; (5) the development of the State's foreign and domestic commerce; (6) traffic and transportation over the Connecticut River.

I should be remiss in my duty if I failed to speak briefly of the changes made in the school law, a matter so vital to the future welfare of the State. The Legislature of 1919

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made certain radical and revolutionary changes in the administration of the public schools of our State. It created a state board of education, in whom it placed the power to employ a commissioner of education and four deputy commissioners to prescribe their qualifications and duties and to fix their terms of employment and salaries. By the salary equalization act of 1921 (House Bill 357), the power to regulate the salaries of the commissioner and his deputies was again assumed by the Legislature and the salaries of these officers substantially reduced. Further changes in the law were made with a view to reducing the cost of state-wide supervision. The Governor, in proroguing the Legislature, characterized these changes as acts "of major importance . . . for the improvement of the school law and some reduction in the cost of its operation." On the other hand, these same changes brought about the resignation of the chairman and three associate members of the State Board of Education. In their letter of resignation to the Governor, these members say in part:

"The mandate given to the Board of Education by the Legislature of 1919 was to study and administer the educational needs of the State as a 'business proposition' and 'to keep the schools out of politics.'

"Essential to the successful operation of the law of 1919 is the maintenance of a state-wide supervisory system, but the State's financial support of supervision has been so reduced as to discourage the employment of competent superintendents in the districts most in need of supervision.

"The so-called salary equalization bill (H. B. 357) wholly disregards the business principles by which private individuals and corporations safeguard their own interests. Such a measure would be destructive to any business enterprise, and it is, therefore, we believe, greatly detrimental to the conduct of the State Department of Education. . . .

"But we are not willing to accept the responsibility for the business administration of a law after the power to fix salaries and terms of employment of all our executive officers and employees has been taken from us.

"We cannot act as directors and managers of the most important business concern of the State after being deprived of the fundamental power on which successful management must depend. . . ."

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Without expressing any personal views upon this important subject of legislation, it is sufficient in passing to suggest that some of the time of the bar may well be spent in thoughtful consideration of the best ways and means in which to treat the whole topic of our public school system of education.

In closing my comment on the laws passed at the 1921 session, it is a pleasure to say that the General Court, notwithstanding a tendency to limit its action within a policy of economy so narrow that it at times seemed to be of the "penny wise and pound foolish" type, nevertheless recognized the inadequate compensation of our judges, and by appropriate legislation raised the salaries of the members of both the Superior and Supreme Courts to $6,000. A bill was also passed, with the approval of the Superior Court, designed so to arrange the terms of court in the different counties throughout the State as to make possible the holding of *nisi prius* terms with the least inconvenience to the judges, to avoid conflict in dates and places, and to promote the dispatch of routine business and the prompt administration of justice.

A word as to things left undone. The Senate provided for absentee voting, but the House refused to concur, because in the opinion of the members of the Supreme Court the act was in the main unconstitutional. Moving pictures were not censored, not because the need of censorship was unrecognized, but because it was felt that the execution of state censorship would prove so impracticable as to be inexpedient. The Legislature did not look with favor upon the bill repealing the causes for divorce or for liberalization of the Sunday laws. It refused to repeal the primary law in spite of considerable agitation for such an alleged reform, by prominent members of both the leading political parties of the State.

Once more it refused to authorize a revision of our Public Statutes. Right here I believe is the opportunity for active work on the part of this Association. The last

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general revision of our statutory law took place thirty years ago. During the fifty years from 1841 to 1891 there were four revisions and one compilation. In the fifteen sessions which have been held since 1891 there have been enacted approximately 2,300 public acts, covering over 2,700 printed pages. There have been more than 700 express changes in the last revision. Let me give you an example taken from the 1921 session laws, illustrating the amount of labor, research and inconvenience which the practicing lawyer must undergo in ascertaining the statutory law of our State upon a given subject.

Chapter 64 of the Laws of 1921 is entitled "An Act in Relation to the Development of Water Power." Section 13 thereof reads as follows:

"Nothing in this act shall be construed to amend or repeal Chapter 47 of the Laws of 1913 as amended by Chapter 178 of the Laws of 1917 or Chapter 162 of the Laws of 1919. Sections 12 to 19 inclusive of Chapter 142 of the Public Statutes, Sections 1 and 2 of Chapter 50 of the Laws of 1893, Chapter 114 of the Laws of 1911 and all other acts and parts of acts inconsistent herewith are hereby repealed."

Again, take the next act, Chapter 65, entitled "An Act to Amend Section 14 of Chapter 169 of the Public Statutes relating to the Taxation of Foreign Insurance Companies."

"SECTION 1. Amend Section 14 of Chapter 169 of the Public Statutes, as amended by Chapter 100, Laws of 1895, Chapter 64, Laws of 1899, Chapter 67, Laws of 1901, Chapter 109, Laws of 1905, Chapter 78, Laws of 1909, Chapter 47, Laws of 1915, Chapter 83, Laws of 1917, and Chapter 72, Laws of 1919, by adding at the end thereof," etc.

One more example. The title to Chapter 72 reads as follows:

"An Act in Amendment of Chapter 40, Laws of 1905, as amended by Chapters 68 and 138, Laws of 1907, Chapter 104, Laws of 1909, Chapter 42, Laws of 1911, Chapters 106 and 116, Laws of 1915, and Chapter 37, Laws of 1919, relating to the Taxation of Legacy and Successions, and in amendment of Chapter 116, Laws of 1915, relating to the Duties of the Assistant Attorney General."

It is surely high time that we resolve that another legislature shall not adjourn without making suitable provision

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for a revision of our Public Statutes, bringing them down to date in one large volume. If we are successful in securing the necessary revision of our statutes at the next session we ought to be prepared to submit at the same time some plan whereby undesirable and unnecessary legislation will be omitted from our books and whereby such legislation as is expedient and necessary may be enacted in such form as to reduce the necessity of future amendments to a minimum.

In the Governor's initial communication to the Legislature he called attention to the fact that from 1893 to 1919 inclusive there were enacted over 1,200 amendments to the laws passed during that period and nearly 700 amendments to the revision of 1891. Of the first 100 chapters of the Laws of 1919, 71 contained specific amendments to pre-existing statutes. The committee on legislation authorized by Article 6 of the by-laws of this Association, ought, I believe, to consider carefully the wisdom of submitting to the next Legislature, with the approval of the Association, a plan whereby the services of a legislative assistant may be secured and made available for the proper drafting of laws and for furnishing members and committees of the Legislature with full information as to the state of the law upon any given subject. The Governor, in the interest of economy, suggested that this service could doubtless be rendered by the attorney-general's office. I am indebted to a member of the Court for the suggestion that it would be unwise to have such an officer tied up with any already existing department, but that there should be created the new office of legislative assistant who should be available to members in and out of session and be able to advise them whether the subject matter of proposed legislation is already covered by express enactment or by the common law, whether such proposed law might be unconstitutional, and if it appeared that no objection stood in the way of the introduction of such a measure, it should be the duty of the legislative assistant to see that the measure was properly drafted. After the passage of any act it should be his duty to examine the same before it is sent to the engrossing

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committee. Is it not probable that the maintenance of such an office would result in great saving to the State in printing and incidentals, would shorten the length of the session materially, reduce legislation to essentials, and, at the same time, secure a correctness of statutory phraseology now so sadly lacking in many instances. If such an officer had been available to the members of the General Court of 1921, the necessity of amending or repealing bills of its own enactment would probably have been avoided. The details incidental to the establishment of this office should be considered by the committee on legislation and presented to this Association for action at its next annual meeting.

The tendency of legislation is toward centralization of power in the State as against local government. Witness the paternal legislation relating to the government of the city of Manchester, the act providing for the centralization of the jails of the State, and the introduction of bills for censorship of moving pictures, for the establishment of a state police force, to prohibit stalls in restaurants, to establish a minimum wage commission, a state board of piano tuning, and to license plumbers and electrical workers.

The Legislature of 1921 convened on January 5 and adjourned April 14. It is now more than two months after adjournment, and the members of the legal profession are compelled to carry on their practice with no practical means of ascertaining the state of the laws passed at this session except by means of a very unsatisfactory copy of the pamphlet laws published by the secretary of state and not available to the profession until the middle of May, a full month after final adjournment.[1] This pamphlet is familiar to you all. It is so condensed and printed in such fine type as to tax the eyesight, as well as the patience, of one who is compelled to avail himself thereof. This ought not to be. Some means should be devised whereby the public acts of the Legislature can be sent to the printer as soon as each act has received the approval of the Governor. The

[1] A condition still existing as this article goes to press, November 18, 1921, more than seven months after the adjournment of the Legislature.

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laws of general application passed at any particular session could then be printed and ready for distribution within a week at least from the date of adjournment. The private acts could be published and sent out later in the form of a supplement. The details of this plan should be worked out by the profession through the "clearing house committee" suggested by our former president, Judge Snow. That there is a very real practical need for some change which will make the session laws available to the profession in less time than it now takes is, I am sure, the sentiment of this Association.

In 1917 there were 27 lawyers in the Legislature; in 1919 this number was reduced to 13, and in 1921 to 12. This tendency for fewer members of the legal profession to seek election to the Legislature is to be regretted. It means, however, that the fewer lawyers there are in the General Court the more carefully should members of the profession at large examine its work and seek to guide the course of wise, expedient, and well-conceived legislation.

One of our leading weeklies thus comments upon the course of legislation in this country:

"A distinguished psychologist informs us that a certain legislative body produced 9,000 bills, but that upon applying his brain scope, he discovered that the membership collectively possessed only 8½ ideas on all subjects. The disproportion is too great."

Civilization should tend to eliminate rather than increase the necessity for restrictive legislation. In rejecting all unnecessary and useless legislation and in seeking the enactment of just and humane laws, the legal profession has a most important function to perform. It must above all things stand for justice in the making and enforcing of the law.

In the closing words of the preamble on the canons of ethics of the American Bar Association,—

"The future of the republic, to a great extent, depends upon our maintenance of justice, pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men."

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IN MEMORIAM.

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ANDREW W. BINGHAM

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ANDREW W. BINGHAM, JR.

BY JUDGE HARRY BINGHAM OF LITTLETON.

Andrew W. Bingham, Junior, of Littleton died at his home on May 6, 1921, of sarcoma, after an illness of some months.

He was born in Littleton on June 19, 1893. After graduating from the Littleton High School in 1911 he attended Phillips Exeter Academy for one year. He then spent two years at Dartmouth College, where he took part in athletics; was elected assistant business manager of the college paper, and was a member of the Kappa Kappa Kappa fraternity. He studied law at the Boston University Law School, and in June, 1919, was admitted to the practice of law.

In the fall of 1917 he enlisted in the Quartermaster's Corps of the Army for service during the War. During a leave of absence in December, 1917, he prepared to take the law examination. Just a day or two before the examination he received orders to report for duty at Springfield, Massachusetts. There was not enough time to procure a special examination, so his admission to the bar was postponed for two years.

He was stationed at Camp Johnston, Jacksonville, Florida, for several months. In the summer of 1918 he was at Camp Cody, New Mexico, where he was commissioned a Second Lieutenant. At the time the armistice was signed he was at Camp Beauregard, Louisiana, with the 17th Division Motor Supply Train, and expected to leave for France very soon.

Mr. Bingham received his discharge on January 21, 1919, on account of ill health. He opened a law office in Littleton in July, 1919, but was compelled early in 1920 to give up his practice, and went to Southern Pines, North Carolina.

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Returning in the spring he remained in Littleton until August, when he went to a hospital in Jamaica Plain, Massachusetts. He returned home in January, 1921, and made a brave fight against a fatal disease.

He was the son of Andrew Woods Bingham, and Corinda Cunningham Bingham (of Portsmouth, New Hampshire). His great-grandfather was Andrew S. Woods, a chief justice of the Supreme Court of New Hampshire. His grandfather was George A. Bingham, a justice of the same Court. His uncle is George H. Bingham, now a justice of the United States Circuit Court of Appeals.

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HOSEA W. BRIGHAM.

BY E. J. TEMPLE OF HINSDALE.

Hosea Wheeler Brigham was born at Whitingham, Vermont, May 30, 1837, the son of John and Huldah (Wheeler) Brigham, and died at Hinsdale, New Hampshire, January 18, 1920, while visiting at the home of his daughter, Mrs. E. J. Temple.

He was educated in the schools of his native town and at Barre Academy. In 1858 he married Florilla R. Farnum, daughter of Joseph and Rebecca Farnum. He followed the occupation of farming at Whitingham until 1862, when he moved to Boston, Massachusetts, where he learned the trade of cabinet maker, which he followed for a short time, then worked for the Old Colony Railroad as baggage master. He had always desired to make the practice of law his life work, and during the time he was in Boston took up the study of the law in his spare time in the office of Judge Asa French. In 1871 he removed to Sadawga, a village in Whitingham, and completed his studies in the office of H. N. Hix, Esq., and was admitted to the Windham County Bar in 1872. He practiced his profession at Sadawga until 1881, and was admitted to the United States courts.

Removing to Winchester, New Hampshire, in 1881 he was admitted to the New Hampshire courts, and thereafter practiced his profession at Winchester. In addition to his law practice he did a considerable fire insurance business.

Mr. Brigham was a staunch Republican. In 1872–78 he was postmaster at Sadawga, Vermont. After coming to Winchester he held many town offices, among which was member of the Constitutional Convention in 1889, member of the House of Representatives 1893–95, member of the

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Board of Education for many years, was town clerk at the time of his death, and had held said office continuously for some twenty-five years. He also was one of the county commissioners for Cheshire County from 1907 to 1913.

He was a member of Philesan Lodge No. 40, A. F. & A. M. of Winchester, and Hugh De Payens Commandry, Knight Templars of Keene, and of other fraternal orders.

Mr. Brigham leaves surviving him two daughters, Mrs. Eva C. Temple of Hinsdale, Miss Maude F. Brigham of Washington, D. C., and one son, Ulric U. Brigham of Whitingham, Vermont, also six grandchildren and five great-grandchildren.

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KENSON ELIPHALET DEARBORN.

BY IRA A. CHASE OF BRISTOL.

Mr. Dearborn, son of Selwyn C. and Emor J. (Trumbull) Dearborn was born in Hill, New Hampshire, April 22, 1844. His parents were of the native race of farmers inured to toil and obtaining only a moderate subsistence therefrom. He passed his youth and early manhood upon the farm, developing a strong physique and rugged constitution, attending the district school until he became ambitious for a more substantial education, whereupon he worked in various ways to earn money sufficient to permit him to attend New Hampton Literary Institution for a while. Being desirous of becoming a member of the legal profession, he entered the office of the late Hon. Lewis W. Fling, for the study of law and practice, where he remained until he was admitted to the bar of Grafton County in May, 1873, at the age of twenty-nine years, having in the meantime engaged in the business of fire insurance. After his admission to the bar he was associated with the late Hon. Samuel K. Mason for a while, but soon opened an office for himself in Bristol, remaining alone in business until 1894, when the writer and himself formed a partnership under the name of Dearborn & Chase, which continued for about ten or eleven years, when it was dissolved by mutual consent.

He was thrice married, and had several children. Mr. Dearborn having married before his admission to the bar, and being obliged to support himself and his wife in the meantime, was later seriously handicapped by lack of thorough legal preparation, but he was resourceful and energetic, early secured a profitable insurance business, and gradually working into a lucrative law practice, generally in important and difficult cases associating some more experienced lawyer with himself in the trial of the same.

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His preparation of the facts bearing upon his cases was thorough.

He was an industrious and untiring worker in business and never took a vacation, more than for a day, occasionally among friends or relatives. His habits were abstemious. He never indulged in the use of tobacco nor intoxicants. Ordinarily he was in favor of the settlement rather than the contest of cases in which he was interested, and had the ability to so impress his views upon his opponents that he usually secured a settlement advantageous to his clients.

His judgment as to the probable attitude of the jury in litigated cases was quite accurate. If possible, he avoided a contest in those which developed weakness in either law or fact. His charges for service were moderate. His practice involved the consideration of many minor matters, though of importance to his clients, rather than those involving large sums and legal intricacies.

He was fair and honorable in his dealing in general and with his clients in particular. He early developed a genius for the purchase and sale of real estate, seeming to have an unerring instinct when to buy and when to sell, and from this source alone acquired a competence, possessing at the time of his death a large amount of valuable real estate. Consequently he never speculated in other lines beyond the loaning of money upon mortgage, which always proved a safe investment. Taking very little interest in politics, although a member of the majority party locally, he never held public office. Although very thrifty, he was very hospitable to his friends and relatives. Realizing his own lack of educational advantages, he took good care that his children should be well educated. He was a keen and sagacious lawyer in matters pertaining to the ordinary affairs of life. He enjoyed fine health till near the last of his life, when he was afflicted with a fatal malady, which caused intense suffering, from which he died on July 11, 1920.

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HERBERT I. GOSS

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HERBERT IRVIN GOSS.

BY DANIEL J. DALEY OF BERLIN.

Herbert Irvin Goss, son of Abel Brown and Lucy Stoddard (Ross) Goss, was born in Waterford, Vermont, December 4, 1857.

He was educated in the common schools of his native town and at St. Johnsbury (Vermont) Academy, from which he was graduated in 1880. After graduation he taught school for about one year and then began the study of law in the office of Bates & May of St. Johnsbury, where he remained for two years, and was admitted to the Vermont Bar in 1883.

In October of that year he removed to Minneapolis, Minnesota, where he engaged in the practice of his profession with F. B. Wright. This partnership was soon after dissolved, and he returned to Vermont and opened a law office in Guildhall, where he practiced for a few months and then located in Lancaster, New Hampshire, where he became associated with the late Jacob Benton and was admitted to the New Hampshire Bar in July, 1885.

This partnership was continued for about two years, when it was dissolved by mutual consent and he removed to Gorham, New Hampshire, and formed a law partnership with the late Albert S. Twitchell under the firm name of Twitchell & Goss, which continued until November, 1888, when it was dissolved and he removed to Berlin, New Hampshire, practiced alone until 1891 and then formed a law partnership with Daniel J. Daley under the firm name of Daley & Goss.

In 1892 Edward C. Niles of Concord, New Hampshire, became a member of the firm which was thereafter known as Daley, Goss & Niles. Mr. Niles retired from the firm

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about three years later and it was continued as Daley & Goss until 1903, when it was dissolved.

Mr. Goss continued to practice alone until August, 1911, when Warren W. James became his law partner, and this business relation continued until the time of his death, which occurred in Boston, October 14, 1920.

As a lawyer Judge Goss was very studious and diligent and on the whole a skillful practitioner.

During his activities at the bar he participated in the trial of many important cases with ability and success. He possessed a faculty for drafting legal documents and excelled in this line of work.

He was a reliable counsellor and his legal opinions were formed only after a thorough examination of authorities on the questions involved.

His loyalty and devotion to his clients were conspicuous attributes of his character.

He was a member of the State Bar Association and of the Berlin and Gorham Bar Association.

In politics Mr. Goss was a Republican and he had always been an active and influential member of that party.

He was elected state solicitor for Coös County in 1894 and re-elected in 1896 and 1898, serving in that office for six years.

He was a member of the New Hampshire House of Representatives in 1903 and served on the Judiciary Committee, and was a member of the State Constitutional Convention in 1912.

At a special election held in September, 1918, he was elected a member of the Governor's Council to fill the vacancy caused by the death of Miles W. Gray.

In April, 1919, he was appointed judge of probate for Coös County, which office he held at the time of his death.

He was several times elected and served as moderator of his ward.

In all the official positions which Judge Goss held he was

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faithful to his trust, and discharged his public duties with ability, impartiality, and to the entire satisfaction of his constituents.

During the earlier years of his residence in Berlin he was notably active in its development and was a leading spirit in the formation, organization, and operation of the Berlin Street Railway, the Berlin Aqueduct Company, various land companies, the Berlin Building & Loan Association, and other local enterprises, all of which were prime factors in the rapid growth and prosperity of the town and city.

At the time of his death he was a director in the Guaranty Trust Company of his city and a director in and president of the Berlin Heights Addition Land Company.

He possessed considerable literary ability which found expression in a variety of ways, more especially in a play entitled, "Monsieur Le Comte," and a book entitled, "T. Thorndyke, Attorney-at-law."

The play was presented in Berlin by local talent to a large and appreciative audience March 31, 1910, and made such a favorable impression that by special request it was repeated the following night.

The book was a very creditable production and was especially interesting, instructive, and entertaining in the author's treatment of local characters and prominent business and professional men in Northern New Hampshire, and in later years this feature of the work will be very valuable.

He was a member of Sabatis Lodge No. 95, Free and Accepted Masons of Berlin, and was a member of the Young Men's Christian Association.

Judge Goss was married October 8, 1886, to Agnes Rooney of Lancaster, New Hampshire, by whom he had six children, five of whom, one daughter and four sons, together with his wife and three grandchildren, survive him.

He was a very companionable man, a good listener, an intelligent and interesting conversationalist, an agreeable

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and accommodating neighbor, generous to a fault, with a forgiving nature.

He never hated anyone or anything; he was slow to anger, was morally upright and was a faithful and devoted husband, a kind and indulgent father, a true and loyal friend, a good citizen, and an honest man.

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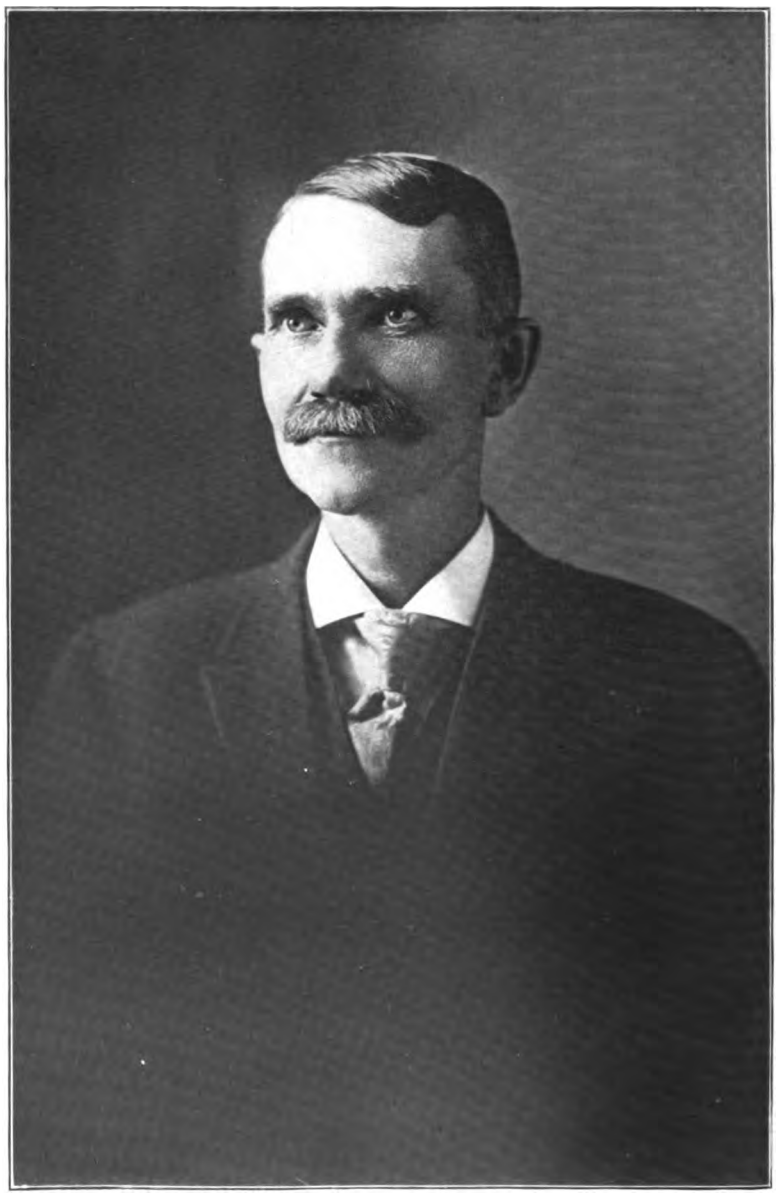

ARTHUR J. HOLDEN

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ARTHUR J. HOLDEN.

BY ORVILLE E. CAIN OF KEENE.

The epitaphs of some men are blazoned on the pages of history. By far the greater number, however, are unknown to fame in the popular acceptation of the word, although frequently contributing more to the substantial advancement of their kind than those whose names are more in the popular mind. Their good deeds engraven on the memories of those who knew them best, they have not sought, but rather avoided undue publicity and have shrunk from discussion of their personal attributes. To this latter class belonged Arthur J. Holden.

Brother Holden was born on the old Holden farm in Townshend, Vermont. He was a descendant in the eighth generation from Richard Holden, who, born in 1609, came from County Kent, England, in the good ship *Francis* and settled with his wife, Martha Fosdick, at Watertown, Massachusetts, later removing to Cambridge, Woburn and Groton. Arthur's father was Hollis Holden, who lived until his death on the old home farm in Townshend. His grandfather, Squire Holden, was born on the old home farm, to which the family had removed some time prior thereto, in 1789, and the farm has continued in the possession of the family from that day to this.

He was of Revolutionary stock, a grand-uncle having joined the Revolutionary Army at the age of thirteen, and other members of the family having participated in that war. He was an extremely patriotic man—one who was interested at all times in everything that pertained to the public welfare and particularly in maintaining the integrity of our Federal Government, and inspiring respect for our Constitution and laws in the minds of the young with whom

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he came in contact. Quiet, unobtrusive, unassuming, he became an important factor in the life of the community.

During most of his lifetime his health was impaired; in fact, during his boyhood days his education was retarded because of this fact. Notwithstanding this condition, however, he persisted and educated himself, graduating in law from the University of West Virginia in 1894.

Brother Holden came to Keene and began the practice of law as a member of the firm of Stowe & Holden, which continued in existence only a short time, in 1895. He never aspired to be an advocate, but his practice largely consisted of office work. Those who came in contact with him professionally grew to respect his judgment and his opinions, with the result that his practice grew quietly but continually.

So far as I know, Brother Holden was never a candidate for public office. While affiliated with the Democratic party, he possessed the profoundest respect of those politically opposed to him. When he was appointed postmaster, which was done in 1912, the appointment was received with satisfaction and gratification by persons of all parties and stations in society. Everyone conceded that we would have a fair and impartial administration of the office, and this proved to be the case.

During the years in which the nation was engaged in war, Brother Holden took part in the various movements to raise funds and equip the nation—such as the Liberty Loan drives and thrift campaigns. This work, combined with his previous ill health, proved too great a strain upon his vitality, with the result that on the twenty-first day of August, 1920, he succumbed to the ravages of the disease from which he had for so many years suffered uncomplainingly.

His outstanding characteristics were his candor, his fairness, and his ability to inspire confidence in those with whom he came in contact.

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JUDGE THOMAS LEAVITT.

BY ARTHUR O. FULLER OF EXETER.

Born in North Hampton, September 29, 1832, the eighth of the eleven children of Thomas and Mary (Marston) Leavitt; died in Exeter, November 3, 1920. He was a descendant of Thomas Leavitt, who, tradition says, came to Exeter shortly before its organized settlement in 1638, signed Wheelwright's noted "Combination" of July 4, 1639, and that year removed to Hampton, where the family has since been large and influential.

Judge Leavitt prepared for college at Hampton and Meredith Academies, and was graduated from Bowdoin in 1856. In 1855 he taught for one term at Hampton Academy. He studied law in the office of the late Gov. Charles H. Bell of Exeter, and was admitted to the bar in 1862. He soon formed a short professional connection with the late Gen. Gilman Marston, and in 1874–75 was the partner of the late J. Warren Towle. In 1880 he formed a partnership with his former pupil, Charles H. Knight, now clerk of the Superior Court for Rockingham County, the firm of Leavitt & Knight continuing for six years, with offices in Exeter and Newmarket. Judge Leavitt has since conducted an individual practice.

In 1865 he was appointed register of probate and transferred his residence from Hampton to Exeter. He served as register for eleven years, until his appointment as judge of probate. This office he filled, with marked ability, until automatically retired on September 29, 1902, when he reached the constitutional age-limit. He instituted many reforms in probate-court procedure, and it is said that not one of his decisions was reversed by a higher court. Moreover, in the trial of causes, he was excep-

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tionally patient and courteous, seldom or never "jumping to a conclusion," or permitting himself to form an opinion of the real merits of the case until all the evidence had been heard and carefully considered—with the result that the bar came to have great confidence in his judgment both of the law and of the evidence; so that the proportion of cases fought to a finish in his court, and no appeal taken, was much larger than in most of our so-called "inferior" courts; and this in spite of the fact that he was by nature pugnacious, partisan, and inclined to "take sides."

In politics he was a Republican. He was the representative of Hampton in 1863–64, and at the same time was its moderator. He was one of Exeter's representatives in 1874–75, and a member of the Senate in 1876. He was an effective speaker, and had been influential in shaping legislation, one act of his creation being that which permits the husband or wife to convey property directly to the other without the intervention of a third person. He has been an influential citizen, and Exeter's Public Library owes much to him. He long served on its managing committee.

As a lawyer, Judge Leavitt was the most uncompromising of all practitioners; once embarked in a cause, his loyalty to his client prevented his admitting, even to himself, that there could be any weakness in that cause, or any justification for yielding a hair's breadth, and this characteristic was more or less of a hindrance to his success in practice, as it sometimes led him to fight out to an unsuccessful end a cause in which a less confident practitioner might and would have secured an advantageous settlement by yielding doubtful points. But in spite of his pugnacity, and of the violence with which he sometimes assailed his opponent for venturing to cast doubt on the justice of Leavitt's client's cause, he made no enemies among his fellow-lawyers, but was on the contrary regarded with genuine affection by them.

As one of his brother-lawyers has said of him,—

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"We naturally expect a very old man, and especially a very old lawyer, to be ultra-conservative; to hold the opinions and think the thoughts of a past generation; that his opinions upon those vital matters of religion, sex and politics would be formed and unchangeably settled during the years of his prime and become more and more hardened into the fixed idea with the flight of years; but Judge Leavitt was never caught that way. His mind was too agile and open to be entrapped. He recognized that all things are in a state of flux; that times change, men change, religions change, all things change except principles. He used to say that every age had a different 'true religion' for which men were willing to die and kill their neighbors. He was always in advance of his age. He was an abolitionist and a woman-suffragist, in politics, and a latitudinarian in religion before such views became popular. On the live, burning issues of the day—the strained relations between capital and labor and the expediency of state control of those relations, his views were, I think, too advanced and radical to meet the approval of the conservative town of Exeter. Not yet has he slept long enough with his fathers for it to be determined whether, on these questions, he was a pioneer on the road to progress or on a byway leading nowhere. . . . He loved to sit down and debate these vital questions with anyone who could be drawn into the discussion, however bigoted and opinionated that person might be. And the peculiar feature of the discussion was that it never ended in temper. He argued these questions as he argued the cause of his clients, with persistency and warmth. Yet he died leaving not an enemy in all the wide world."

Judge Leavitt outlived all his brothers and sisters. He was thrice married, his first wife being Fannie Mitchell, the second Ella C. Brown, and the third Katherine D. Thyng, who survives him, as do two children by his first marriage, Thomas, Jr., of Exeter, and Mary L., wife of Dr. H. W. Broughton, of Jamaica Plain, Massachusetts.

Those portions of the foregoing which are in quotation marks are taken from an address by Hon. Irving T. George, delivered at a memorial meeting of the Rockingham County Bar Association. The rest is copied chiefly almost verbatim from an obituary notice by Mr. Charles E. Atwood, and with his permission. My excuse (if excuse is needed) for appropriating their work is that I feel they have done it better than I could.

Judge Leavitt's physical vigor was remarkable, and

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was but slightly impaired, down to a very recent date. He was especially fond of long walks, and within a comparatively few years he not infrequently walked from Exeter to Hampton Beach, and showed less fatigue than the younger men who sometimes accompanied him. His mental vigor, and his keen interest in all the events of the day, continued to the very end of his exceptionally long life, as did also—a rare thing in men of advanced age—his faculty of forming new friendships and taking up new interests.

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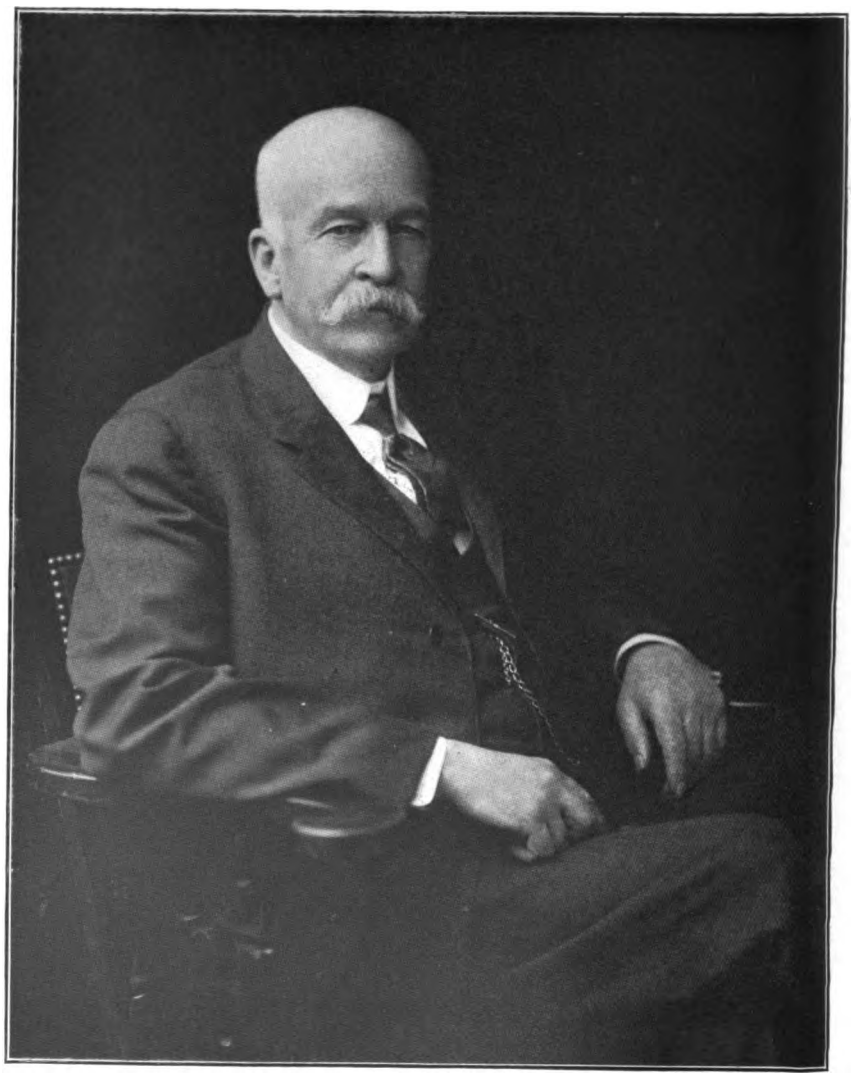

HON. JOHN B. NASH

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JOHN B. NASH.

BY WILLIAM J. BRITTON OF WOLFEBORO.

John B. Nash was born in Windham, Maine, May 17, 1848. He was educated there in the common schools and further in the academy at Gorham, Maine. After graduation he went to Ohio for his health and for a short time taught school there. Returning to New Hampshire in 1871, he married Miss Susan J. Libby of Gray, Maine. They settled in Conway Center, where he studied law with Joel Eastman, Esq., and was admitted to the bar in 1878. Two children were born, Nathan G. and Jessie N., now Mrs. C. H. Craig, with whom Mr. Nash passed his last days. Mrs. Nash survives him.

Mr. Nash took great interest in civic affairs and was untiring in his efforts. He served on the School Board for many years. He served his town in the General Court with great ability, four years during the strenuous sessions of the eighties. He was county solicitor for four years and discharged the duties with fidelity and integrity. He was prominent in banking circles and served as trustee of the Conway Savings Bank for a long time, and at his death was a director of the North Conway Loan and Banking Co. In 1913 President Wilson appointed him naval officer at the Port of Boston. This was the best office coming to New Hampshire, and Mr. Nash had no competitor. He was considered the premier of New Hampshire Democrats.

During his years at the bar he gave of his time and talents freely to the poor and needy. He was counsel in all of the leading cases of his time in the county. He was well grounded in the law and was a powerful advocate. His keen, analytical mind coupled with his forensic ability made

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him effective both as a cross-examiner and in argument before the jury.

He was a very effective campaigner, easily without a peer in the state, and his party relied upon him for many years to espouse their cause, which he did freely and with great results. His ready flow of wit and funny stories made him an ideal stump speaker. He pulled many a dull meeting out of the fire and stirred his fellow Democrats as only John B. Nash could. He was once asked whether speeches made votes and he replied that he was sure they did, for after one meeting where he spoke alone, as he was mingling with the crowd, he heard one man say, "Well, if that is the best the Democrats can do I'm going to vote the Republican ticket."

Personally he was attractive, of large stature and with a fine countenance. His voice was resonant and pleasing. He was of a lovable disposition and his friends were legion.

He was endowed with a brilliant mind which he cultivated by wide reading. His knowledge of literature, especially the Bible, was extensive. His retentive memory was richly stored with "bright gems of thought and golden veins of language." His intimate friends have spent many happy hours with him as he drew from the great reservoirs of thought to their delight and edification. He was a great admirer of Napoleon and delighted to talk of that great genius.

Mr. Nash was a typical Yankee wit and his stories and witticisms are known far and near. He saw the ludicrous in many things and phases of life and his characterizations were most amusing. His stories and sayings will be current in New Hampshire for many years. Like all wits he had a serious side, and he was charitable and generous to his less fortunate fellows. He was a splendid example of a self-made man. He was the personification of originality, and his genus is passing out. He has gone, and we shall not look upon his like again.

In soul he was a Democrat, as Brother Carr wrote of him,

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and he never assumed wisdom beyond that of his party in political matters. He felt that fundamentally his party was right, and little divergences, here and there, were not material when measured by grand purposes. He was wholly unselfish and sincere and loved his party and friends, but he loved his country first of all.

His philosophy of life and death are best expressed in the lines he quoted in his memoir of Walter D. H. Hill, to whom he was greatly attached:

"The sun shines and the shadows fall and the wind whispers among the leaves as before. The seasons change; the time of bud and blossom comes again and again, and the snow's white mantle falls upon the graves of departed friends. The awful indifference of nature to the darkness and pain and sorrow of death seems harsh and pitiless as we turn from the grave of those we loved to the teeming life of a summer's day."

"If a man die shall he live again?" The ceaseless tide of human life has flowed on and on through countless ages since that heart-stirring question was first recorded. Science has been appealed to in vain to answer, and all the passionate longings of love get no reply. Our friends and loved ones pass from the great mystery of life to the equally great mystery of death—and the rest is silence. Only faith can make a hopeful response and never is faith so hopeful as when, regarding duty well and faithfully performed, it listens in the darkness and deep silence of the tomb and hears the still small voice: "Well done, thou good and faithful servant."

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JESSE B. PATTEE.

BY JOHN C. BICKFORD OF MANCHESTER.

Jesse Benton Pattee was born in Warner, New Hampshire, October 3, 1853, the eldest of three sons of Stephen C. and Sally (Currier) Pattee. He died at Manchester, September 30, 1920.

His boyhood days were passed upon his father's farm, attending the schools of his native town, supplementing his graduation from the high school with terms at the Contoocook Academy.

After completing his academic course, he engaged in teaching for a brief period. Having decided on making the practice of law his life work, he began the study of the profession under the tutelage of a Warner attorney, afterwards entering the office of an attorney in Haverhill, New Hampshire, where he remained for about two years, then removing to Brockton, Massachusetts, and there completing his studies, was admitted to the Massachusetts Bar at Plymouth in 1878, and began the practice of his profession in Brockton.

He removed to Manchester in June of 1879, was admitted to the New Hampshire Bar and established himself in practice which continued until his death.

Brother Pattee was a good lawyer. He was well grounded in the principles of law, faithful to his clients, honest in his dealings, generous in his impulses, and studious in his habits. He was interested in the welfare of his city, his state and his country. He was modest and unassuming. He disliked unwarranted displays and detested deceit. Plain facts and truth were his guide in all his works.

In his practice he administered many trusts and dis-

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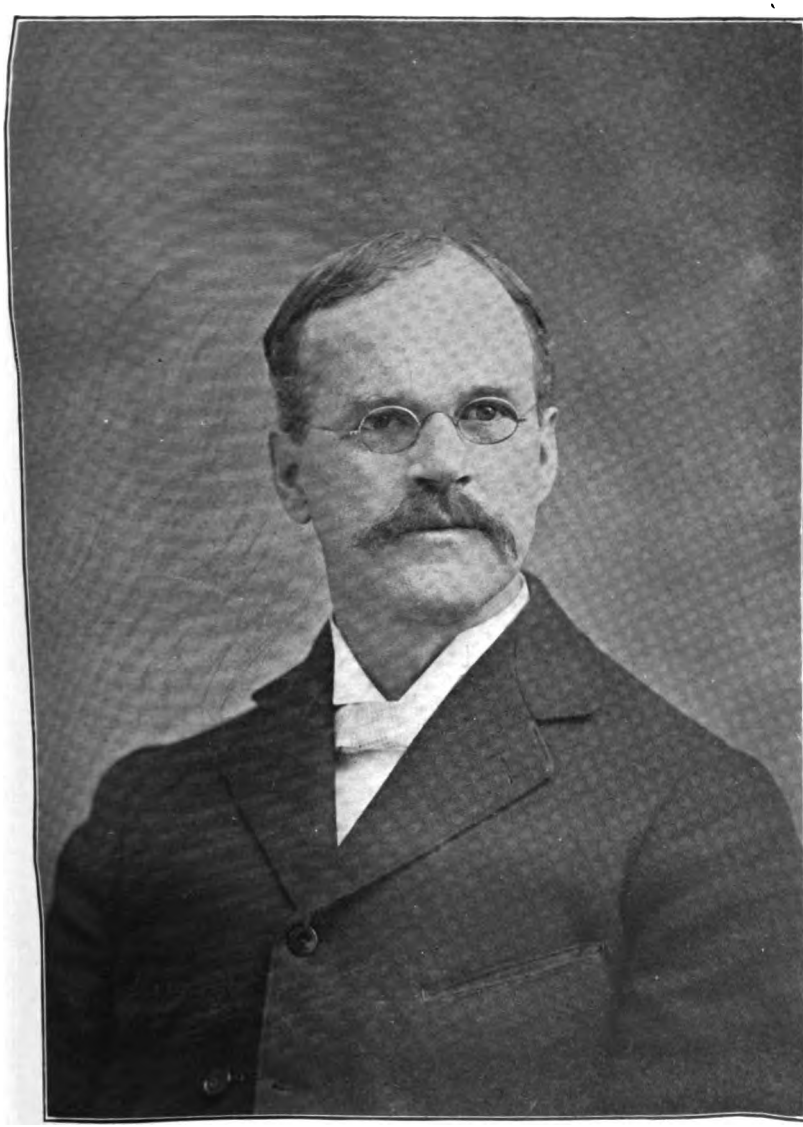

JESSE B. PATTEE

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charged the duties pertaining thereto with strict fidelity. He was interested in several corporations and was one of the promoters of the Uncanoonuc Incline Railway in Goffstown, and also of the Mt. Beacon on the Hudson Association in New York, being clerk of the former, president and treasurer of the latter at the time of his death.

He was clerk of the Common Council of Manchester for two years and was chosen several times to represent his ward in the Legislature and served on important committees in that body. When the office of bail commissioner of the city of Manchester was created, he received the appointment from the Superior Court, and held the office until the day of his death.

Brother Pattee was of English descent and traced his lineage back to Sir William Pattee, who was physician to Oliver Cromwell and King Charles, Second, and who was created a knight in 1660. His eldest son Peter, at the age of twenty-one, immigrated to America in 1669, first coming to Virginia where he resided for about seven years and then removing to Haverhill, Massachusetts.

There he established himself in business, married and reared a large family from whom all the Pattees of New England derive their origin. One of Peter's descendants, Captain Asa Pattee, was a soldier of the French and Indian wars and was present at the fall of Quebec. He came to Warner soon after the close of the Revolution and built the first house in what is now Warner Village. From this branch, Brother Pattee was a direct descendant.

Brother Pattee was married February 5, 1879, to Elisabeth A. Palmer of Meriden, New Hampshire, who survives him. He is also survived by his youngest brother, his oldest brother, the late Dr. William Pattee, having died a few years ago in Manchester. Two nephews, one of whom is Dr. Scott Pattee of Manchester and two nieces also survive him.

He was a member of the Independent Order of Odd Fellows and an attendant of the First Congregational

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Church of Manchester and a member of the Men's Union of that society.

Of a quiet nature, he made friends easily and retained them steadfastly. He loved nature, and his recreation was taking long walks through the woods and fields, listening to the songs of birds and the rustling of the foliage, and drinking in the life-giving air of outdoor life, watching the little people of the woods, as he called them.

His home life was ideal; it was an open house to all his friends. They were sure of a cordial greeting and generous entertainment.

He was a good man, a good citizen, a good husband and a good friend. He rests with his fathers on the quiet hillside of his native town where those who in life were bound to him by the ties of kindred love sleep their last long sleep.

> He is not dead who lived for others' good—
> Only passed on, as into some dense wood;
> Is lost to Vision as in the murky darkness of the night.
> Sweet memories keep him still with us in all but sight.

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JUDGE ROBERT A. RAY.

BY ROY M. PICKARD OF KEENE.

Judge Robert A. Ray, a prominent citizen of Keene for more than twenty-five years, judge of probate for Cheshire County, died at his home, 685 Main Street on August 25, 1920. He was sixty-nine years old.

Robert Allen Ray was born in Palmer, Massachusetts, April 7, 1851, son of Alexander Hamilton and Sarah Jane (Maynard) Ray. He was educated at the Burr and Burton Seminary at Manchester, Vermont, Kimball Union Academy at Meriden and Dartmouth College. He received the degree of A. B. from the college in 1877 and the A. M. degree in 1885. He studied law at college and was admitted to the bar in 1879, practicing in Concord from that time until 1889, in partnership with Hon. Reuben E. Walker, since associate justice of the Supreme Court of the State. Together the two edited and published "Ray and Walker's New Hampshire Citations," a recognized legal authority.

Later Mr. Ray became principal of the Hinsdale High School and came to Keene in 1893 as principal of the local high school. This position he retained until 1904. He was recognized as a thorough student and capable educator, being especially proficient in mathematics. While in Concord he served as a member of the Legislature. He was appointed judge of probate for Cheshire County in 1906, holding that office at the time of his death. He had also acted as judge in the Sullivan County Court during a vacancy. He was a member of the Sons of Veterans and the Cheshire County Dartmouth Association.

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Judge Ray married March 18, 1881, Harriet A. Ballou, who died in 1900. He was married again, in May, 1907, to Clara Adell Ireton, who survives him. He also leaves a daughter by his first marriage, Mrs. Agnes H. Robbins of Philadelphia, Pennsylvania. * * *

A most striking characteristic of Judge Ray's work as a lawyer and a judge was his thoroughness and accuracy. One who is proficient in mathematics, an exact science, is very likely to be exact and accurate in his other work. Slip-shod and careless methods were not enough with Judge Ray. He desired accuracy. He wished to have the files of his court show with exactness what the situation was in the estate that became a part of its records, and more than once he has expressed a sharp disapproval of the work of some accountant when the final account in some estate showed a condition that could be understood only after explanations outside the files. His expressed idea was that these records should be so plain and so accurate that the person not trained in the reading of the law might satisfy his desires for knowledge by an examination himself of the records in his court.

The same characteristic of painstaking accuracy is shown in his work in preparing Ray and Walker's Citations of New Hampshire cases. He was not satisfied merely to point to the profession where certain cases could be found, but he went carefully through the cases cited in all the New Hampshire Supreme Court reports to the 64th and corrected any error in citation that there existed. Such a task meant careful and painstaking effort, and it is not too much to say that this volume thus thoroughly prepared by him and Judge Walker, his colleague, was a long step forward toward the present complete system of annotations in use in every state.

Judge Ray was honest, kindly and conscientious in his relations as man and judge. He had far more patience with the person, who, ignorant of court rules and court procedure, came to him with questions of petty conse-

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quence than with the lawyer who by technical pleading or argument sought to turn aside the clearly expressed purpose of a testator. He was faithful and conscientious in his duties as a judge, and the bar of Cheshire County feels his loss as a worthy and honored member of the profession.

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EDWARD WOODS.

BY JUDGE HARRY BINGHAM OF LITTLETON.

Colonel Edward Woods of Bath, perhaps the oldest member of this Bar Association, died on the fifth day of April, 1920. He was the son of the late Andrew S. Woods, Chief Justice and Associate Justice of the Supreme Court of New Hampshire from 1840 to 1856 (he was born in Bath June 2, 1803).

Edward Woods was born in Bath, October 24, 1835, and lived in the old home until 1863, when he removed to the house across the road, in which he spent the remainder of his life. He passed his boyhood in "the Upper Village," as that part of Bath was called, going to the public schools, then to Phillips Exeter Academy and later to Dartmouth, where he was graduated in the class of 1856. He immediately began the study of the law under his father, who had just retired from the bench to resume his practice.

In 1859 he was admitted to the bar at the old court house in Haverhill, New Hampshire. In the same year a law firm was formed known as Woods and Bingham, having offices in Bath and Littleton. Andrew S. Woods and George A. Bingham (whose wife Eliza was the daughter of Andrew S. Woods) resided in Bath, and Harry Bingham and Edward Woods in Littleton. This firm was dissolved in 1862, when Edward formed a partnership with his father, which continued until the death of the latter in 1863. After that he continued the practice alone, carrying on his work in his later years from his own home.

As a Democrat he represented his town in the Legislature in 1873–74, and was a colonel on the staff of Governor James A. Weston in 1874. In 1892 he was elected to the State Senate and served as a member of the New Hamp-

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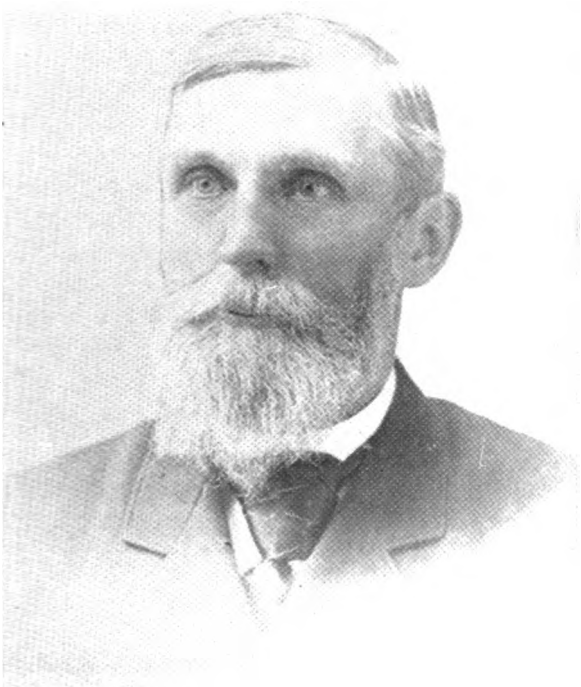

COL. EDWARD WOODS

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shire Constitutional Convention 1918–20. He acted as town treasurer for many years and also as auditor for Grafton County and was president of the Lisbon Savings Bank & Trust Company about ten years.

On April 2, 1863, he was united in marriage to Mary Carleton, daughter of John L. Carleton of Bath, who survives him. Of this union, four children were born: Edward, who died in infancy; Katherine E., wife of Amos N. Blandin of Bath, owner of extensive lumber operations in New Hampshire, Vermont and Maine; Thomas S. of Boston, representative of large copper and iron ore mining companies; and Andrew S. Woods of Boston, a member of Hornblower and Weeks, Bankers and Brokers, who died in 1914.

Colonel Woods was always present at terms of court held at Woodsville, Lebanon and Plymouth, and always attended the annual meetings of the State Bar Association. Last year (1919), at the age of eighty-four, he went by automobile from Bath to the meeting held at Portsmouth.

For a number of years, besides his law business, he was much interested in managing his large farm, which included several hundred acres of valuable and beautiful timberland. He was the typical gentleman farmer.

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APPENDIX.

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ADDRESS DELIVERED AT THE ANNUAL MEETING JUNE 26, 1920.

Legislation of 1919 and Its Tendencies.

BY ROBERT M. WRIGHT OF FRANKLIN.

Any review of the work of our last Legislature which I shall attempt at this time is hardly more than superficial in its nature, but I feel that the president of this Association has suggested a most appropriate subject for consideration although he may have erred in the selection of the person to deal with it.

We may well review the doings of our legislative bodies at all times, but especially should it be done in times of war and of industrial or political unrest. At such times both the stability of our people and the workings of our form of government are put to a test. In these days when governments rise and fall in a day and when there is local discussion about the excessive size of our Legislature it is also a most opportune time to consider the product of our law-making body. Were we to ask the average layman what feature of the 1919 Legislature impressed him most, probably he would refer to his tax bill, but I shall try to indicate a trend of legislation which tends to remove the immediate control of local affairs further from the individual and which also brings back to us a suggestion of the old conflict between State rights and Federal authority.

I have noted three topics to which I invite attention:

I. General Legislation.

II. The Extension of Powers to the State.

III. The Extension of Powers to the Federal Government.

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I.

GENERAL LEGISLATION.

Under General Legislation I will merely mention some of the more important subjects which do not directly affect the succeeding topics.

Taxation.—No marked change was made in our general taxation system but an unusually large amount of money was required as a State tax. This was due principally to direct influences of the war, although also augmented by indirect influences which no individual has escaped. An extension of the system of taxation upon legacies and successions was made so that the combination of death with taxes is now universal, provided the deceased was twenty-one years of age and possessed property. A mill tax or rather a requirement for a registration permit was passed with which doubtless all owners of new motor vehicles are familiar. In the matter of exemptions a certain class of indigent street railway properties was favored.

Protection of Persons and Property.—Under this subheading I will speak of the amendments relating to vehicle lighting, weights and measures, the sale and shipment of food products, several measures relating to sanitation and health, the transportation of inflammable articles upon railways, the extension of authority to the Court to segregate jurors in criminal trials and the extension of factory inspection. New laws were enacted providing for the disclosure of the names of persons doing business under trade names; requiring certain common carriers to be under bonds for payment of damages occasioned by negligence; for dealing with nuisances; for the prohibition of profiteering in the necessaries of life; an amendment to the liquor law which may or may not be for the protection of a person according to the viewpoint of the particular individual.

A most important piece of legislation was the modern Corporation Law of Chapter 92 with its companion, Chapter 93. The credit for the drafting of these laws should be

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given two distinguished members of this Association, Edward K. Woodworth and Allen Hollis. Theirs was the labor, and to them should be given the honor. The Senate refused to extend the field of probate practice to banks and trust companies, and Chapter 121 was passed in order that the field of fiduciary service should be restricted so far as possible under the provisions of the Federal Statute. One product of the uniform law commission was passed which relates to fraudulent conveyances. Something of an innovation was made by the Statute authorizing cities and towns to contract for the continued operation of street railways and also for the purchase and operation of them.

I will refer briefly to a few facts of merely historical interest. At no recent session were there so few contested matters presented. Fewer statutes were passed and the session was not so extended as its immediate predecessors, notwithstanding the special session. Two amendments to the Federal Constitution were ratified, one at the regular and one at the special session.

There will undoubtedly be much interest in the following subjects which are likely to appear at the next session. Legislation relating to intoxicating liquor will again be presented. Much interest will be centered upon some sort of a revision of the so-called Sunday law, for which a recess revision committee has been appointed by the Governor. The licensing of motor vehicles, especially of trucks, will be urged upon the basis of weight. Amendments to the school law will be sought. A workman's compensation act and eight-hour working day will demand attention.

The members of the legal profession can assist greatly in shortening the sessions of the Legislature. Many do not begin drafting their bills until the session is well on its way. The greater number of bills could be introduced by the end of the second week and committee hearings could begin promptly with the third week.

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II.

THE EXTENSION OF POWERS TO THE STATE.

We are ever passing through cycles of evolution in the application of laws. Within the last four years changes have been especially notable. We constantly have two classes of laws functioning in our plan of government, namely, those of immediate locality and those of a larger unit which we term centralized powers. The former allows the individual to participate personally in the governmental affairs of his particular locality, while the latter is exercised necessarily by a representative of the individual. The one is for the exercise and preservation of individual liberties in the neighborhood or town, while the other is to maintain the integrity of state or nation.

The early history of New Hampshire shows the administration of schools and highways by organized districts within a town or city. The old school district system was displaced by the town as a unit system in 1885, which, with various steps tending toward centralization remains upon our statute books to-day. It is, however, superseded in a marked degree by a system of centralized control and administration which quite removes it from the authority of the local unit. The state has become the real unit and the towns and cities are arbitrarily classed together as districts of the state unit.

In 1903 plans for a new system of handling highways was begun. Funds from the state treasury were expended for so-called state highways. Soon three main highways were proposed, and before those were completed provisions were made for cross state highways and for state aid highways in practically every town in the state. This system supersedes the local or town system whenever any highway is designated for improvement by the use of funds of the state. Education, travel and transportation are now recognized as never before as being more than local matters.

Within the past decade our state has administered a

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considerable part of the government by a departmental head or commission, and each Legislature has placed additional duties upon the several departments of the state. The last session was no exception in this respect, but it also transferred a supervisory authority to the governor and council, thus bringing a responsibility back to elective offices. Matters of policy and discretion respecting duties under the law applying to the State Highway Department may now be reviewed and decided by the governor and council. Another notable instance of the return of authority to elective offices is that of Chapter 14, by which the board managing the state institutions was abolished and the active administration of the institutions vested in separate boards of trustees of which the governor and one member of the council are ex-officio members. By the same statute the office of purchasing agent was established under the supervision of the governor and council.

III.

THE EXTENSION OF POWERS TO THE FEDERAL GOVERNMENT.

The passage of the prohibition amendment gave rise to much discussion relating to the method of amending the Federal Constitution and the subject matter for amendments. However, there seems to be no doubt as to the view in which such amendment is regarded by the Supreme Court of the United States. Clearly the amendment and the enforcement act constitute a narrowing of the field of individual conduct by the exercise of our most centralized form of government. The legislation of 1917 and the amendment of 1919 relating to intoxicating liquor are at least equally stringent and such laws are in complete accord with the Federal amendment and enforcement act.

The centralized powers of our state join with those of the Federal Government in accepting Federal aid for

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highway projects in New Hampshire and also for certain lines of education.

Clearly the outstanding feature of our last legislative session is that of the transfer of centralized authority for administration of functions formerly exercised by a head directly responsible to the voter and the restriction of the action of the individual in what is commonly called personal liberty. The single source and foundation of authority is from the people. The Federal Constitution is the result of the action of the states, as are all amendments thereto. The Federal Government cannot amend its constitution. Such power lies only within the states acting as such in accord with the provisions already agreed to by them. If under constitutional restrictions additional rights are surrendered can we at this period of civilization question the efficacy of this constitution or the acts of our representatives chosen thereunder?

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REPORT OF THE TREASURER, 1920–1921.

Balance on hand at date of last annual meeting:		
Liberty Bonds,	$1,000.00	
Cash,	584.67	
		$1,584.67
Received for dues,	$819.00	
Received for Bar Association reports,	23.00	
Received for half-tone plates used in connection with the annual report,	24.86	
Received interest on Liberty Bonds,	63.75	
		930.61
which added to cash on hand at beginning of year and Liberty Bonds makes total receipts of		$2,515.28
This amount is accounted for as follows:		
Paid for:		
Incidentals at last year's annual meeting, including the cigars for banquet and telephone tolls and speakers' hotel bills,	$84.29	
Traveling expenses of Geo. B. Young and Geo. W. Wickersham, speakers at last year's meeting,	52.10	
Printing fee bills,	26.00	
Printing annual reports and making half tones,	504.96	
Stationery, postage, printing notices,	113.16	
		780.51
Cash on hand,		$1,734.77

Above balance is made up of $734.77 in cash, and Liberty Bonds $1,000.

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1921–1922.

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Treasurer—FREDERICK E. WADHAMS, 78 Chapel Street, Albany, New York.
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JAMES W. REMICK of Concord.
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ANNUAL ADDRESS.

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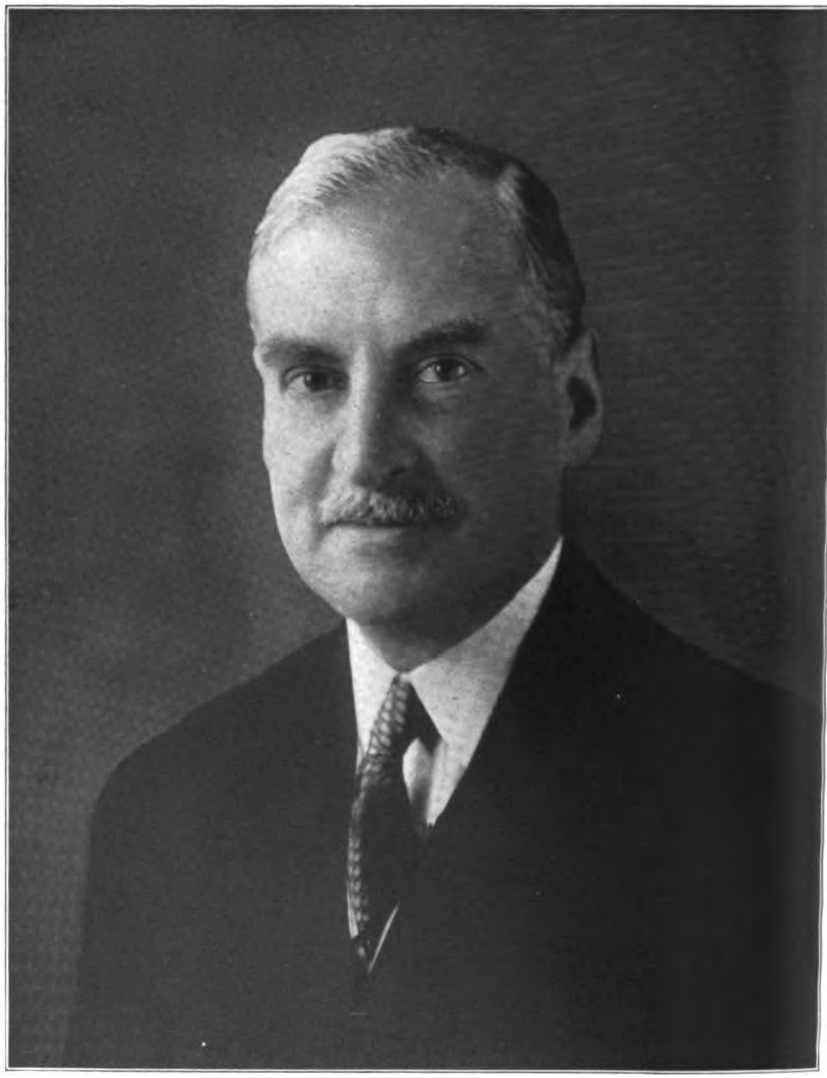

GEORGE WHARTON PEPPER

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ANNUAL ADDRESS.

Lawyers and Senators.

BY GEORGE WHARTON PEPPER, UNITED STATES SENATOR FROM PENNSYLVANIA.

About six months ago I was as much absorbed in the practice of the profession as are any of you. There was the usual list of cases for trial and argument. If anybody had told me that I had a duty to discharge which outranked attention to these I should have laughed him to scorn. One day the Governor of Pennsylvania, without a moment's warning, drafted me for public service. Within a week thereafter I was sitting in the Senate of the United States endeavoring to discover whether I had been translated into a new world or whether I was looking at the same old world from a different point of view.

Six months of observation have convinced me that it is the same world that I knew before but that the angle of vision is altogether different.

It has accordingly occurred to me that on this occasion it might be interesting to my professional brethren if for the discussion of a question of law I were to substitute a comment upon some of the points of agreement and difference between the work of a practicing lawyer and the daily task of a senator of the United States.

As far as one's colleagues are concerned it is in the Senate much as it is at the bar. A picked body of American men is sure to be an agreeable group of people to work with. Of course your intimates are apt to be men of the same political faith. Within the party there are naturally those to whom you are much more strongly drawn than others. Among those who have shown marked consideration to a new sen-

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ator and have impressed him as possessing in eminent degree all the most important senatorial qualifications, I should like to mention the two distinguished senators from New Hampshire, Senator Moses and Senator Keyes.

As to the manner of men who compose the Senate it would be highly improper for me to speak. I am aware of the existence of a widespread impression that senators of to-day compare unfavorably with the great senators of the past. This criticism has a familiar sound. We lawyers have been humbled since youth by the comforting assurance that the brightest ornaments of the bench and bar died about the time we were admitted to practice. In the case of senators, critics attribute our inferiority to the combined operation of direct primaries and the election of senators by popular vote. Undoubtedly senators are to-day within easy range of public opinion. They are therefore subject to powerful and constant pressure to abdicate the function of representative and to assume that of an instructed delegate. Even if at first the quick succession of campaigns has a tendency to make the senatorial mouth responsive to the popular bit, I am not at all sure that senators are going to yield habitually to this pressure. If as a class they do not, their fibre will be the better for the test; and it is at least possible that the American people will respect and trust men with minds of their own even if the same American people choose to keep the power of direct selection in their own hands.

In this connection it must not be forgotten that if the senatorial type has changed, so has the world. The world of to-day differs at least as much from the world of 1850 as any present-day senator differs from Daniel Webster. It seems to me useless to attempt comparisons between things that are so unlike. One characteristic of the earlier day was the prevalence of fixed beliefs on multitudes of subjects. This implied reverence for authority and respect for law. I remember hearing my father-in-law, Professor George Park Fisher, say that, when in his youth in Massachusetts a public question presented itself, most people would hold their

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judgment in suspense till Mr. Webster had pronounced his opinion. To-day there is less reverence for authority and still less respect for law. Instead of being proud of yourself when you agree with your senator you are proud of your senator when he agrees with you.

The truth is that dogmatism is to-day in at least partial eclipse. Relatively few people are content to accept experience at second hand. And there are multitudes whose unhappy first-hand experience with things as they are makes them most hospitable to all sorts of schemes for changing everything for the better.

Now this does not indicate to me that the bottom is dropping out of civilization or that there are no ultimate truths. It indicates to me that the world has changed too fast for our capacity to interpret it. The world of 1850 had been fairly well explored by able men of thought and action. They had become qualified guides because they knew the woods. They could tell you what course to follow, where to find water and how to make camp. If you followed them they would lead you on to civilization. But to-day the woods have changed. Scientific discovery and industrial development have made the old wood-signs worthless. We have plenty of men who have the qualities which make guides reliable. But they are not yet guides; they are explorers. The public man of 1850 was the captain of a trans-Atlantic liner sailing a well-charted sea. The public man of 1922 is Champlain feeling his way along this stern and rock-bound coast with nothing but the lead and compass to depend upon.

All of which means that dogmatism is in eclipse because no human mind has yet comprehended the twentieth century. Therefore nobody is qualified to tell the world with valid authority just how to solve its problems. A man with fixed beliefs should re-examine them fearlessly in their application to the new environment and commend his conclusions to others not as demonstrable but as probably true. He must be patient with those who refuse to accept them or who in

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the meanwhile are proclaiming their opposites. Columbus must have sympathized with his boatload of sceptics although he knew there was land ahead. I often remind myself of a wise saying of Leslie Stephen which Mr. Balfour prints at the beginning of one of his books. "A doctrine," says Stephen, " is first received as an intuitive truth, standing beyond all need of demonstration; then it becomes the object of rigid demonstration; afterwards the demonstration ceases to be conclusive, and is merely probable; and, finally, the effort is limited to demonstrating that there is no conclusive reason on the other side. In the later stages of belief, the show of demonstration is mere bluster, or is useful only to trip an antagonist."

To us lawyers many things are self-evident which to others are far from clear.

I try to bear this in mind as I sit in my place in the Senate and hear perhaps an attack upon the Supreme Court of the United States. You and I have what we regard as a just appreciation of the place of the Judiciary in our national life. We think we know what the Supreme Court of the United States has meant to us from the beginning. Knowledge in our case has brought reverence. When somebody attacks American courts in general, or the Supreme Court in particular, we are moved to resent it almost as we would blasphemy.

If we pause to think for a moment it will occur to us that the doctrine of *Marbury* v. *Madison* is one of the doctrines to which Leslie Stephen might have applied the language which I have just quoted. Every organized government must place its ultimate trust either in the Executive, or in the Legislature, or in the Judiciary. Germany deified the Executive, with consequences that are familiar to us. England has placed her supreme trust in Parliament, and Parliament has proved to be the palladium of English liberty. The wisdom and courage of Marshall, more than any other factors, account for the way in which we as a nation have pinned our faith to the court. It is clear to us that

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nine selected men, with life tenure of office, and a written constitution to guide them, can safely be trusted to determine the conformity or non-conformity of legislative enactments to the prescriptions of the Constitution, and may be allowed the authority to invalidate legislation found to be in conflict therewith. Yet I keep reminding myself that in the first instance it took a long while to reconcile many men trained as we are to assent to this proposition and that it really should not surprise us if there are multitudes to-day who stand aghast when suddenly they realize that the opinions of a bare majority of nine justices may nullify the expressed will of the National Legislature. We ought not to become emotional as we read the proceedings of the last few days in the Convention of the American Federation of Labor at Cincinnati. Two facts stare these earnest men in the face. One is that the Supreme Court recently declared the Federal Child Labor Law unconstitutional; the other is that the Supreme Court recently declared that the consequence of civil liability for torts attaches to unincorporated labor unions in the same way in which such liability would attach to groups of people associated for business purposes. These judicial decisions, which seem to us so normal and inevitable, seem to them like symptoms of a judicial tyranny. These men personify the Judiciary and honestly think of its functioning as if it were just as much of a usurpation as anything that king ever attempted to do to Parliament. Accordingly, they propose an amendment to the Constitution giving to Congress the right by a two-thirds vote to reverse a decision of the Supreme Court.

To me as an American lawyer this is almost a challenge to fight. To me as a senator of the United States this is a warning that I must not resort to dogmatism to win acceptance for my fixed beliefs. It is my business to re-examine the whole subject and to interpret judicial supremacy to my fellow citizens as on the whole the best solution of an inherently difficult governmental problem. Even as a practicing lawyer it seemed to me that most members of the bar

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were unintelligent and perverse in their refusal to see the conditions which gave rise to Theodore Roosevelt's proposal of a recall of judicial decisions. When it comes to a congressional veto of decisions of the Supreme Court, I hope that American lawyers will act like statesmen with convictions rather than like old-fashioned orthodoxy in the presence of heretical utterance.

As I sit in the Senate I am called upon from time to time to consider the possibility of political relationships with Russia. If I were to think only as an American lawyer it would be hard for me, with the precedents of our own revolution and of the French revolution clearly in my mind, to reach any other conclusion than that recognition of the Soviet Republic is the logical course to pursue. I must remind myself, however, that possibly a controlling consideration is in this case neither political nor legal, but economic. To what extent is international intercourse possible between a government which has nationalized property and a government in which the many are content to recognize the private property rights of those who can acquire them? I find myself of the fixed belief that a recognition of private rights in property has been a concomitant of the world's progress. I find myself unable to imagine satisfactory relations of any sort between those who hold this view and those who agree to Proudhon's assertion that private property is theft. Therefore, I find myself approving the attitude on the question of recognition taken by our government. At the same time I am bound to realize—if I am to understand all of my constituents, and not merely some of them—that there are multitudes of people in the United States to whom you cannot dogmatize in regard to private ownership. I should not be surprised to find our colleges fairly well provided with teachers and students to whom the relative advantages of property privately owned and property nationalized is a mere matter of probable opinion, together with a very considerable number who are convinced that capitalism is always and everywhere an evil. Outside of the colleges we

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know how widely held these opinions are. Three factors enter into the formation of such opinions. The one which the champion of private property rights delights to emphasize is covetousness, or the desire to get something for nothing. But the other two factors are the ones which it is more wholesome for me to emphasize,—namely, the tyranny and selfishness which have too often characterized the dominion of the private owner. As lawyers, we know that ownership is the word we use to describe the combination of control and enjoyment. When the lawyer in me is irritated by the propaganda of communism, I try to force the senator to remember that exaggerated control is tyranny and that immoderate enjoyment is selfishness.

The question of law enforcement is popularly thought of just now in connection with prohibition enforcement. In considering this aspect of the matter there are three people to be taken into consideration, and not two. In addition to the lawyer and the senator, there is the man with the thirst. It is said to be hard to stay honest when you are hungry. I am certain that it is difficult to think clearly when you are thirsty. The adoption of the Eighteenth Amendment by a strictly constitutional process has produced a situation with which the lawyer and the senator ought to be content, but which is extremely unwelcome to the thirsty man. Accordingly, the thirsty man produces statistics to show the failure of prohibition, and the man who is only a lawyer remembers his oath to support the Constitution and laws, and stands committed to the policy of enforcement. It seems to me to be the business of the senator to do what he can to insure such a long continued and honest experiment in prohibition and law enforcement as will make it reasonably possible to decide whether the thirsty man sees things as they actually are, or only as he would like to see them. It is likewise the duty of the senator to keep his mind open for a fair consideration of any concrete proposal to amend existing enforcement legislation. I say frankly, however, that so far no concrete amendatory proposal that has been

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brought to my attention seems to be deserving of adoption or support.

In this imperfect way I am rehearsing to you what has gone on in my own mind as I have sought to relate my training as a lawyer to the discharge of my duty as a senator. I pass over without mention various minor contrasts, which have interested me greatly, between the procedure to which we have been accustomed in court and the procedure to which I suppose I shall become accustomed in the Senate. Such things are subordinate to my main purpose, which is to assert three propositions, as follows:

My first proposition is that merely because dogmatism is for the time being in partial eclipse is no indication that there are not ultimate truths. Astronomical theories may at a given time be discredited, but the stars keep on shining.

My second proposition is that during the eclipse of dogmatism, those of us who are in senatorial office and hold fixed beliefs will do well to re-examine them for the purpose of interpreting them reasonably to people by whom they are not shared, instead of scolding vociferously those whose life problem is different from ours.

My third proposition is that such fixed principles as the doctrine of *Marbury* v. *Madison*, the right of private property, and the obligation to respect an unwelcome law, have had a sufficiently long trial in America to justify the hopeful belief that when the period of eclipse is passed, the American people will announce with no uncertain voice their intention to stand fast in the ancient ways.

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PRESIDENT'S ADDRESS.

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REUBEN E. WALKER

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INTRODUCTORY REMARKS.

BY JAMES W. REMICK, PRESIDENT OF THE ASSOCIATION.

Brethren of the New Hampshire Bar Association and Our Distinguished Guests:

I am sure that the thought uppermost in all our minds as we come together this afternoon is of the tragic coincidence that, since our last meeting, Judge Reuben E. Walker, who was then elected president, and D. Arthur Taggart, who was then elected vice-president and who succeeded Judge Walker as president, have both died; also two ex-presidents of the Association, Judge Edgar Aldrich and Irving W. Drew. I need not say that these were all able and incorruptible men, a credit to our profession and an honor to the state and nation.

I should be more than human if I did not feel a becoming pride that your Executive Committee should have deemed me not unworthy to succeed, even though but temporarily, such men as Judge Walker, D. Arthur Taggart, Judge Aldrich, Irving W. Drew, and the long line of distinguished men who have, from time to time, presided over your deliberations.

How faithful my immediate predecessors were to the trust you reposed in them is shown by the fact that, notwithstanding the brief period they held the office, they both anticipated this meeting by most important and valuable service—Judge Walker by beginning and finishing the customary President's Address which he was to deliver on this occasion, and Brother Taggart by arranging with the great Jurist and Senator from the great State of Pennsylvania, to be here to-day as our principal guest of honor and to deliver the customary Annual Address. How we wish that Judge Aldrich and Brother Drew were both here to

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share with us the exercises and fellowships of this meeting. How we all wish that Brother Taggart was here to introduce the distinguished Senator whose attendance he arranged for, and to act as his host. How felicitously and gracefully he would have performed the part. Let us believe that he is with us in spirit. How we also wish that Judge Walker was here to deliver the notable address, the manuscript of which I hold in my hand, written in pencil, and with that remarkable brevity, clarity, and diction which distinguish his judicial opinions.

It deals with the tendency of lawyers to become the mere servants of big business and deprecates this tendency as a lamentable departure from the traditional lawyer, who is described as an officer of the court engaged, not merely in protecting the rights of his client but in administering justice as a noble science—enriching it with learning and guarding it with honor. The address is an inspiring summons to the observance of the highest standards by the members of our profession.

Instead of taking advantage of my brief and adventitious presence in the chair, to obtrude a formal President's Address of my own, I shall read what Judge Walker had prepared and ask to have it printed in the records of this meeting as *the* President's Address.[1]

I could not, if I would, add to or detract from this admirable address. I only interpret its spirit when I say that the question, after all, is not *whether* but *how* our profession should serve big business.

In view of the ever growing body of law relating to business combinations and the relation of such combinations not only to the industrial but to the political life of the state and nation, how can a lawyer employ his professional skill and integrity more beneficently than by representing big business in this vast and important domain of law,

[1] At this point, Judge Walker's Address was read and is printed in full as the President's Address following these introductory remarks of the President.

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provided he does so with scrupulous adherence not only to the ethics of our profession but to" honesty" and "justice," adherence to which the New Hampshire Constitution (Part 1, Art. 38, Part 2, Art. 83) and the Supreme Court of New Hampshire (58 N. H. 628) declare to be "necessary to preserve the blessings of liberty and good government."

May we not thereby improve the ethics of business and render great service not only to our clients but to our country. It may be said that if we represent big business at all, it must be according to its own standards, be they good or bad. Not so. It must be not only the right but the duty of every attorney to say to big business, when put to it, "If I represent you at all, it must be in accordance with the ethics of my profession and with those general principles of 'honesty' and 'justice' which have been declared by the Constitution and courts of my State 'to be necessary to preserve the blessings of liberty and good government.'" If every lawyer, with the backing of every court and every Bar Association in the nation, were to pursue that course, big business could not persist in unethical demands and methods, if it wanted to. But according to a recent address[1] by the head of the greatest business institution in America—the United States Steel Corporation—no such collision between our profession and big business is necessary, for big business, according to that declaration, frankly admitting past delinquencies, has come to recognize a code of ethics of its own which leaves no occasion for collision with the most scrupulous lawyer. If differences arise in the future between the captain of industry and his lawyer, on the score of ethics, the lawyer will have only to appeal to the moral law of business just declared by Judge Gary in order to justify himself and to estop his client. In the future the struggle will be not for the lawyer to stand by his own code of ethics against the enticements of his business clients, but rather

[1] Address on "Ethics in Business" by Elbert H. Gary at the Northwestern University, Evanston, Ill., June 17, 1922, printed in full in appendix at page 550.

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not to tempt his business clients to violate the moral standards of business as declared by the biggest business man in the business world. I count that declaration of business morality, coming at such a time and from such a source, so epochal in the annals of American business that I shall ask to have it printed as an appendix to the records of this meeting, there to stand for all time in connection with Judge Walker's Address as a basis upon which the lawyers of New Hampshire may serve their business clients with the most scrupulous regard for the ethics and traditions of their own profession and the requirements of "honesty" and "justice." If the ethical standards set forth in that declaration are not accepted and acted upon in the days to come by both big business and its attorneys, the fault should not be with the members of the New Hampshire Bar in permitting that declaration to be forgotten by their business clients or in forgetting it themselves. Let us hope that this most remarkable deliverance, coming from such a source and at such a time, may be the herald of better conditions, at home and throughout the world.

PRESIDENT'S ADDRESS.

PREPARED BY REUBEN E. WALKER.

That there has been a great change in the practice of the law during the last fifty or even twenty-five years, no one will dispute. That lawyers now assume to attend to the purely business affairs of their clients more than formerly is quite apparent. Instead of advising their clients in regard to their legal rights and attending to the litigation of those rights in the courts, the modern lawyer is ambitious to bring about results for his clients by entering the broad field of negotiation and business enterprise. He seeks to become an adept in commercial undertakings and to bring about fortunate results for his clients, not so much by his knowledge

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of legal rights and duties (these are often quite unimportant), as by his assumed knowledge of human nature and his ability to handle men. The fact that he is a member of the bar gives him undoubtedly a certain prestige, which, if shrewdly employed, is often of great use in his occupation of dealing with men on a business basis. But a profound acquaintance with the principles of law is not a prerequisite to success in this somewhat new but intensely practical branch of the modern lawyer's employment. The important elements for success in this special field are alertness, courage, and an appreciative understanding of business methods and schemes. The modern lawyer is to no inconsiderable degree a man of affairs, and he is more liable to become distinguished for his ability in this direction than for his professional skill or legal learning.

This development of evolution in the practice of the law, or, to be more accurate as it seems to me, in the practice of lawyers, or in the work which they aspire to do, threatens to dwarf and overshadow the original and fundamental functions of the true lawyer; and it suggests the interesting question whether the law as a noble and profound science will not suffer serious loss thereby. The seriousness of this question cannot be controverted when we consider the fact that the older members of the bar, instead of devoting their time and ability to the development of the law by exhaustive research into legal principles ably expounded in briefs and arguments, leave this important work to be done by their juniors, while they attend to the business affairs of their clients. It follows that the inevitable tendency of this situation is to paralyze the healthy and progressive administration of the law; to withdraw from it the aid and strength of an able bar,—its indispensable support,—and to impose upon it the precarious experiment of standing alone. When lawyers cease to take an interest in legal principles, except when the exigencies of the present case require some knowledge of it, which is furnished by the law clerk or student, the legal

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system will cease to be progressive and will enter upon its decadence.

The suggestion has been made that it is an important part of the lawyer's duty to so advise his client both upon his legal rights and upon the development of business facts as to avoid litigation; that corporations, which have increased in number and importance to a remarkable extent within the last fifty years, employ lawyers to prevent rather than to conduct lawsuits; and that for this reason among others it has transpired that the lawyer's principal function now is to be his client's assistant in managing business interests and secondarily to be his adviser and counsel as to legal rights and duties. It is said that the lawyer's sphere of action has widened, and that he must be not only a good lawyer but a good business man in order to attain the highest degree of success, or rather to reach the position of the ideal practitioner.

This assertion which is nowadays so flippantly made is inconclusive and dogmatic. It has not, as it seems to me, acquired the dignity of a self-evident truth, and the question therefore, is: Is it true? Will it stand the test of a reasonable analysis, either historically or fundamentally on principle?

The aim of those who advocate and try to justify this modern innovation would seem to be to entirely reverse the original common law conception of the relative duties of the barrister and the attorney, making the function of the latter superior in importance to the former. The barrister or counsel, strictly speaking, was an officer of the court whose professional duties related exclusively to the administration of justice, and to the vindication and establishment of legal principles. His office was entirely honorary. It was not a trade or business in a vulgar commercial sense. He was looked upon as a defender of public justice and the conservator of a legal system upon which the social institutions of his time rested. Nor is this a merely fanciful notion conceived for no practical purpose. The successful and

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progressive development of the common law requires advocates. Its life and strength depend upon the skillful and conscientious study of legal principles as a science by the members of the bar. The history of the development of the common law from the time of Richard III to the present time teaches no lesson more emphatically than that great lawyers acting, not as pettifoggers and shysters, but as profound students of the law, have been steadily at work demonstrating the excellencies of the system, applying its principles scientifically to the changing requirements of society, and correcting the errors that are naturally attached to it. Without their unselfish and incessant labors in this behalf, our present legal system, both common law and statutory, would necessarily be rude and chaotic. Unremitting study by experienced lawyers has been the burden imposed upon the profession by the common law; and because lawyers have willingly assumed that burden, they have been termed great barristers.

A barrister, therefore, was not deemed a mere agent—attorney—for the party whom he represented in the matter in hand—whether in court or outside of it. He was primarily the indispensable assistant of the court and the servant and representative of the public. He was in short the public guardian of legal rights, upon whom was imposed most arduous duties.

On the other hand, the attorney, who could not at the same time be a barrister, was regularly employed by the client and became in fact his agent; he attended to what might be termed the business or affairs of his client for a pecuniary consideration; and when necessary employed the barrister, who by virtue of his honorary position was entitled to no compensation from the client. In short it may be said that the attorney was his client's business agent, and not much besides. Strictly speaking, he was not a member of the bar. He could not appear in court as counsel or give advice professionally upon points of law. Nor, on the other hand, were barristers allowed to do the business of an attorney.

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Such in brief are the distinctions between these two grades of lawyers as they formally existed in England and to a large extent as they exist in that country to-day. The great lawyers were barristers, the petty lawyers were attorneys; those who had to do with the administration of justice and influenced the course thereof were barristers; those who did not reach that height were attorneys. The latter were essentially business men occupied with a trade.

This distinction has not been generally recognized in this country. And still it has in fact existed. The great lawyers of this country have corresponded very strictly to the barristers of England. They have been students of the law who have seen in the profession a vast field open for the exercise of their talents and who have not sought to combine with it vocations more properly embraced in business or trade. The old-fashioned lawyer, as he is sometimes called, spurned to be asked to engage in "the doing of things." He regarded it as unprofessional to use his influence as a lawyer to bring "things to pass" at the dictate of his clients' commercial ambition. He was unalterably opposed to selling his professional reputation for the purpose of filibustering and lobbying some business scheme through to a successful issue. Beyond giving his advice as to the law on a certain state of facts, he did not regard it as his professional duty to engage in the attempt to make the facts fit the law. When that point was reached, he stopped; for he was unwilling to engage in commercialism. As has been well said of the eminent class of lawyers of thirty or forty years ago: "They had profound knowledge of the law as it was stated in the books; they were ready with apt quotations from Coke and the year books; they knew the law as a science; they studied legal principles in the abstract; they were men of immense learning; their logic was stern and relentless; their reasoning powers were highly developed; they were the great lawyers of their time."

It is now said that the inexorable course of human events has rendered this learning merely ornamental and super-

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fluous; that the great lawyers of to-day do not require "profound knowledge of the law as it is stated in the books"; that it is unnecessary that they should know "the law as a science"; that they need not study "legal principles in the abstract" or possess "immense learning"; and that their delinquencies in these respects are more than counterbalanced, under present conditions, by their knowledge of the petty details of business and commercial intercourse. Upon this theory (if it can be termed a theory) a somewhat superficial understanding of legal principles in their practical application, great knowledge of business methods and some common sense, are the chief characteristics of the great lawyer of these modern days.

For it must be true that if the modern lawyer is to devote his energies principally to the acquisition of a knowledge of the methods of money making in the commercial world, he cannot acquire at the same time a profound knowledge of the law, which is the result only of a lifetime of persistent study. Life is too short and human capacities too limited to justify the opposite conclusion. Since, then, it is impossible for him to acquire all knowledge, since indeed it is impossible for him to unite in himself the profound knowledge of the law possessed by the great lawyers of former times with the practice of commercialism, the question from a professional stand-point is whether the former should be sacrificed to the latter; that is, whether a great lawyer nowadays ought to practice more business and know less law. Which is the more important? Which is the earmark of a great lawyer?

When we say that a man is an eminent or distinguished lawyer, the assertion is predicated upon some ideal. We are comparing him with some degree of excellence in his vocation which approximates perfection. We consciously or unconsciously adopt a standard and measure him by it. But the standard is the standard of his profession, not of some other profession or calling. When Mr. A, a lawyer, and Mr. B, a farmer, engage in lobbying for votes in the

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legislature by resorting to indirect and secret methods, which indeed may not be criminal in their character, the success of A is no evidence of his professional standing as a lawyer any more than the success of B proves him to be a great agriculturalist. When they are rewarded with equal success in some commercial or manufacturing enterprise, no one would say that the one thereby became a great lawyer and the other a great farmer. This merely illustrates concretely the error of crediting a lawyer with the results obtained, not in the practice of the law, but in fields outside the legitimate domain of the law. If a lawyer should devote his Sundays to enlightening his neighbors upon their religious duties, his good reputation as a preacher would hardly be said to add to his reputation as a lawyer. A false standard cannot give correct results.

When, therefore, a lawyer engages in business, either for himself or as the hired agent of another, he so far ceases to be a lawyer in the true sense of the term and becomes a business man. At any rate he relinquishes the position as a barrister and becomes merely an attorney or solicitor.

But it will be said that if he accomplishes or brings about legal results beneficial to his client, it is immaterial in the clear sunlight of modern times whether he is called a barrister or an attorney or agent. So far as his client is concerned this may be true, but so far as his true standing as a lawyer is concerned, it is not true, unless it is admitted that whatever a man does for another after his admission to the bar, he does in his capacity as a lawyer. While the legal profession has to do with all the innumerable vocations of men, it does not include all those vocations. It is merely one of many pursuits.

It is a mistake to say that a lawyer owes no duty except to his client and his own pocketbook. And it is equally a mistake to assume that whatever his client desires him to do he ought to do; in other words, that the demands of clients determine the scope of professional action. It is said that

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men employ lawyers to assist them in making money and attaining success in the world of affairs, and that a lawyer who does not submit to this demand in its broadest sense fails to appreciate his opportunities and misconceives the object and scope of his profession. But it is plain that so far as he governs his course in accordance with this broad and almost unlimited suggestion, the science of law and its due and progressive administration would deteriorate. The unavoidable tendency would be to subordinate jurisprudence to commercialism; to regard the success of a business scheme in which only a few are interested as more important professionally than the establishment of legal principles in which the welfare of all men as members of society is fundamentally involved. The shortsighted policy of business in requiring this sacrifice seeks to appropriate the prestige justly due to the profession through the conscientious endeavors of the old-fashioned lawyer to its selfish purposes. If the profession of the law, as recognized for hundreds of years, were deemed merely a trade, if it had not been recognized as the most potent influence in the establishment and vindication of legal rights, the aid of its members would not be sought by business men in non- and extra-professional labors. A tinker, then, would be worth as much as a lawyer.

It is, indeed, a grave situation when the most brilliant intellects in the profession are thus prostituted to commercialism. It degrades the profession to the level of a trade and renders obsolete and useless, persistent study of the law and the science of jurisprudence. If that science in the future is to be healthy and progressive, as it has been in the past, if it is to bring order out of chaos and continue to expound and enforce the rights of liberty and property, no conscientious lawyer of ability will fail to discern his duty but will, as said by another, be "willing and anxious to devote his entire life to the development of the jurisprudence of his country."

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IN MEMORIAM.

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GEORGE W. STONE.

BY CLARENCE E. CARR OF ANDOVER.

Mr. Stone was born in Plymouth, New Hampshire, November 11, 1857, the son of Charles J. F. and Abbie Anna Weare Stone. He was educated at Colby Academy, a graduate therefrom in 1874, was graduated from Dartmouth College, 1878, and studied law with Hon. John M. Shirley at Andover. He was graduated from the Boston University Law School, 1882, and admitted to the bar the same year. In partnership with Mr. Shirley, he practiced from January, 1883, until the death of the latter in 1887.

He was superintendent of schools in Andover, 1879–80, and a member of the Board of Education for nine years. He represented Andover in the General Court, 1885 and 1887, being the Democratic candidate for Speaker in 1887. He was a member of the Constitutional Convention in 1902, 1912 and 1917. He was for a long time clerk of the Concord and Claremont Railway, a trustee of Proctor Academy and a trustee for several years of the New Hampshire State Library. He was clerk of the Merrimack County Draft Board, No. 2, in 1917, a member of the A. F. and A. M., P. of H., and Patrons of Animal Husbandry.

He married April 28, 1887, Stella M. Prince, who died December 28, 1914. He had three children, Florence S., born March 20, 1889, who died February 2, 1906; Charles S., born August 3, 1892, who graduated from Dartmouth, 1913; left Harvard Law School in 1917 to enter Plattsburg Training Camp, having the rank of First Lieutenant in the National Army. Another son, Fred W., born January 18, 1899, graduated from Proctor Academy, 1917, entered service, and died from exhaustion and exposure at the time of the wreck of the S. S. *Castalia*, in the North Atlantic, while in the service of the United States.

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Mr. Stone, after a few months' painful and trying illness, about the only real sickness he ever had in his life, died September 2, 1919.

A good lawyer, doctor and minister are the three fundamentals of a good and successful community. Mr. Stone was such a lawyer. He had a very high notion of his obligations to his clients, and once engaged in a case, it frequently became more his case than his client's. He never divided his obligations. He always evinced a loyalty to his clients, his party and his friends that was unswerving. His label once on them, he stuck and could not be changed. He was a good fighter. Though sometimes defeated, he was never beaten. Defeat was rare. He could not be beaten.

He hated what seemed to him "humbugs." He thought there was a good deal of "humbug" in the law, and though careful and scrupulous in his advice to his clients, he had little or no use for any law that seemed to him to interfere with his personal liberty. He felt that a foolish man should take the consequences of his folly, and that the man who made him foolish had little or no responsibility.

He rarely went to the Law Court on any question, had little or no interest in the philosophic discussion of the law. He won his cases without doing so. That was what he was driving at: to win his cases.

He had a fine legal mind, and indefatigable energy when once interested or engaged in an undertaking, and his capacity for work, when he did get interested, I have never seen equalled. Note the fact of his taking the three years' course in the Boston Law School in one year, coming out with the valedictory of his class, and passing the best written examination that had been passed by any student admitted to the New Hampshire Bar at that time.

He always kept people out of lawsuits and trouble when he could, and frequently would refuse to serve them when he could not. He was generous with his advice. His neighbors have had "bushels" of it without thought of paying or thought on his part of charging therefor.

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He was scrupulously careful about the payment of his own bills, and the handling of money belonging to his clients or others. He was utterly careless of his own finances. He never kept any books of account. He never refused a client because he had no money, and never took one because he had it. He gave financial aid to anybody and everybody who was "down on his luck," or made him think so. Curiously enough, many such men would pay him when they never dreamed of paying any one else. Despite this he was a good financier and accumulated a handsome property, measured by his needs and wants. His wants so far as food and clothing were concerned were the fewest of any man whom I ever knew, not because he was parsimonious, but because he lived simply as a protest against what he termed "modern extravagance." He seemed sometimes indifferent as well as impervious to heat and cold and hunger. He did not care whether he ate once a day or once in two days, nor whether it was noon or midnight. Once done, he forgot all about it. He never let it interfere with anything else he had on hand.

Though seldom in the Law Court, I do not think he ever stated a proposition of law to any tribunal without commanding instant attention. Almost instinctively, he knew what the law was fundamentally.

He was an ultraconservative in the law as in most other things. He disliked innovations and changes. Fads never took him off of his feet. He would have few changes in the Constitutions of the state or of the United States. Both were sacred documents. He thought frequent and radical changes needless, precedents growing out of them harmful, and attempts to write police regulations, new methods of taxation, and socialistic theories in them wrong in principle and worse in practice. So he was against them. But even so his associates in constitutional conventions recognized his worth, his judgment, and his integrity. He was a member of the Committee on "Future Mode of Amending the Constitution and Other Proposed Amend-

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ments" in the Convention of 1912. He was chairman of a similar committee in the Convention of 1917, and would have performed his duties with as clear and patriotic an intelligence as any man in New Hampshire.

But above all things, he seemed to love his farm where he had spent his childhood and to which he used to go always with delight. He loved the neighborhood around it; his neighbors and the verbal controversies he had with them. Nothing delighted him more than an argument, and a man had to be well posted, and a clear and fast thinker who could meet him. He was one of the readiest speakers I know. He made few speeches, yet I think he was the best ten-minute speaker in New Hampshire. He rarely spoke longer than that; and when he stopped, you felt he had covered the essential points in the subject.

I say he loved his farm, and after the sad and unfortunate death of his little daughter and his wife, much of his solace came from his farm. He was deeply interested in his boys, their thoughts, their work, their games. At work, they got no favors over the others, and asked none. He was a believer in work, not six hours or eight hours per day, but work till the job was done. Both of his boys went into the service of the United States in the Great War, to which, to the exclusion of business and everything else, he had given his time and thought and energy as a member of one of the best boards, if not the best, in New Hampshire, and when his son went down in a gulf of flood in the North Atlantic the inducements of life seemed to have left him and did not wholly come back again. He dearly loved his surviving son, of whom he was rightly proud, but when the news came that Fred had gone, I think as I look back on him that night, that thenceforward he was careless of life, and did the things he thought he ought to do and regretted not the end, however painful the way.

I never knew a man with whom I disagreed on so many things. For nearly thirty years we were neighbors,—real neighbors,—and yet continually "scrapping." He was a

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"hard-hitter." He neither gave nor asked quarter. Therefore, I have many things to forgive and forget. So had he. I am pretty certain, however, that he would exactly repeat my statement were he living and I dead. After all, cannot something like this be said of most of us?

Faithfulness was Mr. Stone's chief trait. Faithfulness to the things that seemed to him worth while, and many of them were worth while. He was proud of the traditions of the bar. He never forgot that he was an officer of the court.

A lawyer's obligations to the court and the state, as officers of the court, transcend all duties to his client.

The Constitution and laws creating and fashioning this government of ours have emanated largely from the brains and consciences of members of our noble profession. This world has been made possible to live in, and the blessings of liberty made our common heritage under organized law, largely by their wisdom, foresight and patriotism. Let us of a later generation, and those who are soon to take our places on the bench and at the bar, emulate their example, be true to their trust and our obligation, and swerve not from that purpose which holds high the torch of honorable endeavor and carries with it the obligation of complete fidelity to the preservation of the state and the ideals of our profession.

This should be a lawyer's creed. In a large measure it was Mr. Stone's.

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EDGAR ALDRICH.

BY GEORGE H. BINGHAM OF MANCHESTER

On a Sunday afternoon in September, when the mountain regions of our state were resplendent with beauty, on a crest of land overlooking the Valley of the Ammonoosuc, in the immediate shadow of Mt. Eustace and that of the more distant LaFayette, all that remained of the subject of this sketch was consigned to earth in the presence of his associates of the federal courts, the judges of the state courts, members of the bar and relatives and friends among whom he had passed the greater portion of his life, respected for his courage and ability and beloved for his kindness and good will. In that same burial ground reposed many of his associates of an earlier day; leaders in their chosen profession, for whose character and ability he entertained the highest regard; with whom, while here on earth, he enjoyed the most intimate relations; and with whom, if there is a life hereafter, he is now no doubt recalling the occurrences of the past, discussing the problems of the present and philosophizing as to the future. I can see him, as, with that characteristic poise of the head and gesture of the hand, he signals for attention in opening the conversation.

Edgar Aldrich was born February 5, 1848, in the town of Pittsburg, formerly known as the Indian Stream Territory, an outpost in the northern section of our state bordering on the Canadian line. For a number of years that portion of the territory lying between Hall and Indian Streams was in dispute between our own and the British Government, and in 1830 its inhabitants, among whom his paternal and maternal ancestors were numbered, set up and maintained for a time an independent government pending a settlement of the controversy.

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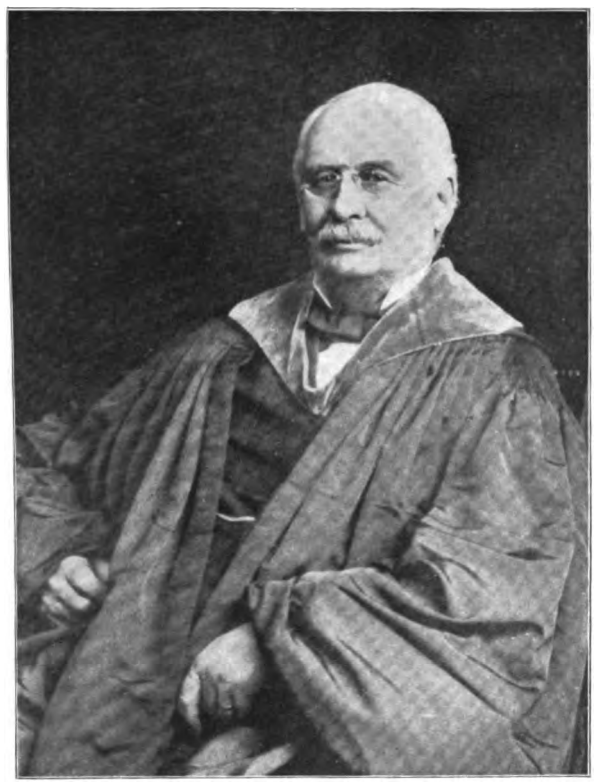

EDGAR ALDRICH

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His parents were of old New England stock. His grandfather, Ephraim C. Aldrich, came from Connecticut, and his great-great-grandfathers, General Timothy Bedell and Colonel Joseph Hutchins, from Massachusetts. His father was a farmer, also active in the management of the Upper Coös Lake & Improvement Company, and, during the Civil War, was a deputy provost marshal and devoted much effort to raising men and money for the prosecution of the war. His great-great-grandfathers, General Timothy Bedell and Colonel Joseph Hutchins, and his great-grandfather, General Moody Bedell, were soldiers in the Revolutionary War, and the latter was also an active participant in the War of 1812. Of the two Bedells, the former is said to have "raised more troops in the Province of New Hampshire in the War of the Revolution than any other one man," while of the latter, at the sortie of Fort Erie in 1814, it is said that "the sword of Moody Bedell, the son of Timothy, was a flame of fire, and the onslaught of the 'bloody eleventh,' which he led, was a bolt of lightning."

The house where he was born has long since ceased to exist; the foundation stones alone remain to mark the spot. It stood in a field adjacent to the Hill or Back Road that leads past the farm and summer home of the late Senator Spooner, on the way to the First Connecticut Lake. It was a wood colored structure of the type common in such communities, and differed in no material respect from that in which our most distinguished citizen, Daniel Webster, first saw the light of day, and after whom, through the efforts of Judge Aldrich, the main highway leading through our state was named, that travelers might ever be reminded of the state of his birth.

Judge Aldrich's mother's maiden name was Adeline Bedell Haynes, the granddaughter of General Moody Bedell. She was a slight person, delicate of make-up and refined in manner, who lived to the advanced age of ninety-two years. I remember calling upon her with the judge at her daughter's home, when she was ninety-one. In speak-

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ing of his mother but a short time since, he said: "My mother died at the age of ninety-two. In parting with her for the last time, when she was even then as handsome as a girl of sixteen, I said, 'Good luck, mother, and long life.' I some time ago resolved never to say 'good bye' to anybody. I prefer to say 'good luck.'"

During his boyhood days the judge remained at home, working on the farm and attending the district school, until he was fourteen years of age. He then entered the academy at Colebrook, where he attended school for about three years. During a portion of this time he worked in a country store to obtain money with which to pay his way. Soon after the completion of his work at the academy, in 1866, he began the study of law in the office of Ira A. Ramsey of that town. He subsequently entered the law school of the University of Michigan, from which department he was graduated in March, 1868, with the degree of LL. B., at the age of twenty. He then returned to Colebrook and was admitted to the New Hampshire Bar at the August term of the court in Coös County, the presiding judge being the late Jeremiah Smith, who, being kindly disposed and helpful to young men, allowed him to be admitted without inquiry as to his age, although he probably knew he had not reached twenty-one, the limit fixed by the rules of court. He opened an office and commenced the practice of his profession at Colebrook, continuing alone until 1870. He then formed a partnership with William H. Shurtleff under the firm name of Aldrich & Shurtleff, which continued for four years. Later he was for three years similarly associated with James I. Parsons, and after that again practiced alone until his removal to Littleton in 1881, where he became a partner of my father, Judge George A. Bingham. In May, 1882, Daniel Remich was admitted to the firm, which continued under the name of Bingham, Aldrich & Remich until January, 1885, when Judge Bingham went upon the bench for the second time. For the succeeding five years he was associated with Mr. Remich and there-

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after was alone until he was appointed United States District Judge by President Harrison in February, 1891.

Five men preceded him as district judge, the incumbency of only one of whom exceeded his in duration—that of Matthew Harvey, who held the office for thirty-six years. He succeeded the Honorable Daniel Clark, a graduate of Dartmouth College of the class of 1843, who held the office for twenty-five years.

While in practice at Colebrook he was twice appointed solicitor for Coös County; first in 1872, at which time he served in that capacity for two years; and again in 1876, when he served for three years. In November, 1884, he was elected a member of the Legislature from Littleton and was chosen Speaker of the House. He was a member of the Constitutional Convention in 1902, having been chosen without opposition by his fellow townsmen to represent them in that body. In 1891 Dartmouth College conferred upon him the honorary degree of Master of Arts and in 1901 that of Doctor of Laws; and in 1907 the University of Michigan also conferred upon him the degree of Doctor of Laws.

He was married October 7, 1872, to Louise M. Remich of Colebrook, who survives him. They had two children, Florence M., who resides in New York and is the wife of Howard S. Kniffen, and Ephraim Fred, now dead, but for some years a lawyer in Boston. He had four grandsons and a granddaughter, who were his great delight and pleasure. He spent many a happy hour in devising surprises and making plans for their entertainment and in writing them letters, mingling pleasantries with wholesome advice and philosophy.

I have known Judge Aldrich for many years. For some time prior to 1876 a term of court was held at Colebrook in the month of August and the business of the district was at that time such as usually to engage the attention of the court throughout the month. My father, then fifty years old and at the height of his practice, regularly attended

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court there, and at an early age I began going with him to Colebrook and did so quite regularly down to and including the summer of 1876. We lived at the Parsons House, a hotel kept by Samuel Remick, and the first time that I recall seeing Judge Aldrich was in the summer of 1872, when he was paying attention to the lady who, in the October following, became his wife. I know little of the character of his early efforts at the bar, but do know that as early as 1874, or 1875, he had gained the attention of the people of his locality from hearing them discuss his powers as an advocate and from having heard one individual in particular remark that he thought in the future they would be able to dispense with the services of some of the lawyers who came in from out of town.

He was especially kind to me as a boy and was equally so after I reached manhood and became a member of the Supreme Court of our state and later a circuit judge. As an associate upon the bench I passed many a pleasant hour in his company; and at various times I visited him at his camp at the Connecticut Lakes, where, for many years, he was accustomed to go annually to enjoy the early spring fishing; and I always found him an enjoyable and most hospitable man.

His activities in his profession covered an extended period. He practiced law nearly twenty-three years and officiated as a judge for over thirty. His name appears as counsel in cases pending at the law term of the Supreme Court of our state as early as January, 1870, and by the year 1876, when only twenty-eight years of age, he had no less than thirteen causes pending there; and I doubt if there is a year from 1870 to 1891, when he went upon the bench, that his name does not appear in many causes at the low term. When he came to Littleton in 1881, he had firmly established himself in his profession, and the business of the firms with which he was there connected was undoubtedly as lucrative and substantial in nature as any in the state.

The opportunities afforded in this country for obtaining

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an education are now so exceptional that we are inclined to think that one who has not enjoyed them to the full extent cannot be regarded as sufficiently trained to attain high rank in any of the recognized professions, and the query arises: How did Judge Aldrich, in view of the character of his early training, attain the rank of a practitioner and judge that he did? Without minimizing the advantages of a thorough education we will recall, if we stop to consider, that the process by which he rose to strength and power was not new in his case, that such things have occurred before, and that men of purpose and courage have, by persistent effort, risen to high place and performed the exacting and important duties required of them with special credit. John Marshall, regarded as one of the most substantial men of his time and the greatest interpreter of our Constitution had, if history informs us correctly, scarcely any elementary school training and attended lectures upon the law for only about three or four months. I cite this as an example of what one may accomplish through his own efforts if he possesses the requisite mental and physical vigor and perseverance, but I do not advocate it for the average man; it is too difficult, too likely to be fraught with cross currents, too discouraging for such as he. It remains true, however, that he who will not be denied may succeed and may acquire through his own exertions such power of analysis, breadth of comprehension and facility in the use of correct and terse language as will enable him to perform important and difficult tasks in a most acceptable manner. Judge Aldrich possessed the requisite qualities of mind and body and set them to the task.

The instruction which he received at the law school, under the supervision of that eminent teacher and jurist, Judge Cooley, though brief, undoubtedly played an important part in giving direction to his endeavor. Then again the men with whom he early came in contact in his profession and later became associated with in business must have contributed in no small degree to the develop-

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ment of his methods of thought and expression and have stimulated him to make the supreme effort to enlarge his knowledge of the law and improve his ability in the conduct of a cause. Here he found real standards by which to govern his actions, for the lawyers of the Grafton and Coös bars of that day were the equals of any in the state. Among them were William Burns, Judge William S. Ladd, Ossian Ray, Jacob Benton, Josiah Benton, and Irving W. Drew, in Coös County; and in Grafton County, Harry Bingham, Judge George A. Bingham, Judge Edward W. Rand, and Judge Alonzo P. Carpenter,—men whose field of endeavor was not limited to their respective counties, and whose knowledge of legal principles and ability in the trial of causes was of the highest. The litigation in those counties differed much in character and importance from what it is now. The title to large tracts of valuable timber land was undetermined and constituted a fruitful source of litigation, in the course of which forensic and legal encounters were had of no mean order. In such company and with such surroundings the subject of this sketch soon learned the necessity of a thorough preparation of his cases, both as to law and fact, and being eager for success he put his shoulder to the wheel.

Among the causes in which he participated in the state courts and which he regarded, I think, as he looked back in after years, as having added as much to his reputation for ability and research as any, was that of *Connecticut River Lumber Company* v. *Olcott Falls Company*, 65 N. H. 290. In that case he and Hon. Irving W. Drew were counsel for the plaintiff and Judge William S. Ladd and Judge Jeremiah Smith for the defendant. The suit was a proceeding in equity to determine and regulate the rights of the parties in the waters of the Connecticut River, the plaintiff being the user of the stream for navigation purposes in floating logs, and the defendant a mill owner which maintained a dam for manufacturing purposes across the river without making provision for floating logs through or over it. The

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right of trial by jury was claimed by defendant's counsel on alleged constitutional grounds embodied in Article 20 of the Bill of Rights, which guaranteed the right of trial by jury in all controversies concerning property "except in cases in which it . . . [had] been otherwise heretofore used and practiced." The question was one of constant recurrence and had long been the subject of controversy, but had never been definitely determined. It required investigation not only into the practice in such matters prevailing in the colony at and prior to the adoption of our Constitution, but in England from which the great body of our law and methods of trial came.

In the report of this case the briefs of counsel are reproduced and extensive space is given to the oral arguments of Judge Smith and Judge Aldrich, the argument of the latter covering forty-two pages. He was then forty-one years old, and this argument probably discloses as well as any record of his endeavors his power as an advocate, the kind of investigation he was capable of making, and his ability to analyze and forcibly state a legal proposition.

After stating that his adversary's construction of the clause of the Constitution in question was that it referred to "the use and practice existing in New Hampshire in 1792, not to the use and practice existing in some other jurisdiction in 1792, nor to the use and practice existing in New Hampshire at some antecedent date"; and that in New Hampshire in 1792 there were no equity trials, Judge Aldrich said:

"If these reactionary arguments are to prevail, it is certain that the intelligence and business of the age will receive something of a shock. Of course, it is needless for me to say that these propositions are contrary to precedent and authority in this state. Indeed, it is conceded that the authority, understanding, and practice for many years have been against the position taken. The grounds of these radical arguments are, that the various courts of the state, passing on these questions, have been guilty of gross legal error, and have been false to history.

"The ingenuity and energy with which he [Judge Smith] sets out in argument to demonstrate his propositions, demand a compliment to the

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versatility and power of his genius. He easily demolishes the judicial utterances of Judge *Bell* in *Wells* v. *Pierce*. 27 N. H. 512; and the commendation of Judge *Ladd* in *Copp* v. *Henniker*, 55 N. H. 186, who, in referring to this question, said that Bell was in his day 'the highest authority in all matters of our provincial judicial history,' does not save him.

"The opinions of Judge *Ladd*, in *Perkins* v. *Scott* and *Copp* v. *Henniker*, displayed an historical research and a breadth of judicial reasoning and logic which helped to build for him a reputation as a jurist not limited to the state which he honored while a judge of her highest court, nor to the country to which he belongs, but a reputation reaching beyond, meriting and receiving the judicial plaudits of the great country from which we have been borrowing our jurisprudence. But the structure builded so strongly was easily demolished by his associate. Counsel then passed to the court which rendered the opinion in *Bellows* v. *Bellows*, *supra*, which goes with the rest; and the serio-comic part of the exhibition is presented at this point in the argument, when Judge *Ladd* mounts the ruins of his own judicial structure, and passes on with the flood at its height, lustily and enthusiastically cheering the author of his ruin."

After considering various statutes and decisions relating to the practice in equity prior to the adoption of our Constitution and after quoting extensively from opinions delivered by his learned adversaries, when previously upon the bench, and expressing his profound obligation to them for their observations when speaking as members of the court, he said:

"Drawing from the whole country for precedent for his argument, the only dictum counsel finds in support of it is that of Judge *Ladd*, in *Copp* v. *Henniker*, 55 N. H. 191, 192. But this dictum had reference to an actual practice in the province. Now, suppose there was no 'practice' to do a certain thing in a certain proceeding in this province: then where does the 'heretofore' carry you? Nowhere? Or is it reasonable to suppose that they meant some system somewhere? If there was a system of equity jurisprudence in England, time-honored and well understood, in which it had been 'used and practised' to regulate certain classes of controversies and certain classes of rights without a jury, and if it be true, as argued by the other side, that such proceedings had not been 'used and practised' here at all prior to 1792, is it any less probable that the exception 'heretofore otherwise used and practised' had reference to such well understood practice and usage in English courts of chancery, than that the guaranty of trial by jury, without any allusion whatever to

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practice or usage theretofore, had reference to the well known and time-honored jury system of England described by Judge *Parker* in *Pierce* v. *State*, 13 N. H., and by Judge *Foster* in *King* v. *Hopkins*, 57 N. H., rather than the crude and inartificial jury system which was in actual use and practice in the colonial, provincial, and early state periods of our history, as held in these cases? To argue that it is less probable is to argue the term 'heretofore otherwise used and practised' meaningless verbiage, referring to practice nowhere, and that the authors of it were a set of narrow, senseless old gentlemen—an argument which ought not to prevail against the acknowledged historic wisdom and rugged common-sense of the men who constituted that illustrious body. In other words, if the guaranty part of the clause as to jury trial means a jury trial of the law courts of England, according to the common law practice, why does not the exception, which is the other part of the same clause, by force of the same reasoning, mean the equity trials of England according to the chancery practice of that country?

* * * * *

"There is nothing in history, there is nothing in our jurisprudence, there is no peculiar principle in our institutions, which make equity proceedings, according to the ordinary course in England repugnant to the people of this country."

When he came upon the bench in 1891 he was forty-three years old. He was strong physically and his mental vigor was at its height. At that time the First Circuit consisted of the four states of Maine, New Hampshire, Massachusetts and Rhode Island. It was not until 1915 that it was enlarged by the addition of Porto Rico. There was then no circuit court of appeals and but one circuit judge, but in March, 1891, Congress established circuit courts of appeal, and in 1892 an additional circuit judge for this circuit was appointed. All of the district and circuit judges then in service are dead, except one, and he resigned sometime ago to take up political life.

Those who were on the bench at the time he became a member of the court were undoubtedly better versed in the federal practice and certain branches of law which, owing to our systems of jurisprudence, are only cognizable in the federal courts; but in view of his thorough knowledge of the common law it seems to me that he contributed quite as

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much to maintaining the standard of the court for judicial learning as those with whom he became associated. Being well grounded in the common law, which is the basis of all our law, he readily acquired facility in the branches peculiar to the federal courts and, being open-minded and schooled in a jurisdiction where the merits of a controversy rather than the formal technicalities of the law prevailed, he soon came to the front in the administration and development of the law.

His first reported opinion is *Patten* v. *Cilley*, 46 Fed. 892, decided July 8, 1891. The reports show that he wrote about 100 opinions in the district and old circuit courts and 133 in the Circuit Court of Appeals. It is also to be remembered that he tried many jury cases in which no opinions were written and that he sat in a greater number of cases in the Circuit Court of Appeals than any other district judge in this circuit, in the disposition of which he took part with his associates. While the number of opinions appearing in the reports under his name do not represent the entire body of his work, they afford a measure of its character and form a basis by which to judge his capacity as a legal investigator, his power of analysis and method of statement.

The Court of Appeals Act of 1891 introduced many new and important questions relating to procedure and the jurisdiction of the federal courts. The first case decided by the Circuit Court of Appeals in this circuit was *Richmond* v. *Atwood*, 48 Fed. 910. It was a patent case in which the lower court, after full hearing on the merits, sustained the validity of the patent, found infringement and ordered a perpetual injunction and an accounting. An appeal was taken from the decree granting the injunction to the Circuit Court of Appeals. Judge Aldrich sat in the case in the upper court and Judge Colt wrote the opinion. That court, after a hearing on the merits, handed down its opinion February 2, 1892; it reversed the decree of the court below and held that the patent was invalid for want of novelty, or, if it was sustainable at all, the defendant had not in-

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fringed. A motion for a rehearing was filed, and on hearing the motion the court raised the questions whether it had jurisdiction to entertain the appeal at the stage which the case had reached below; and whether in its mandate it should simply order that the decree for an injunction be reversed, as it had in its previous opinion, or should direct that the bill be dismissed. The opinion upon these questions was written by Judge Aldrich and will be found in 52 Fed. 10, decided September 27, 1892. It was held that the decree from which the appeal was taken was interlocutory and that, under Section 7 of the Act of March 3, 1891, an appeal would lie, following a decision of the Circuit Court of Appeals in the Fifth Circuit; but as to the second question involved the court refused to follow the Fifth Circuit and held that, although the decree appealed from was interlocutory, yet as the court had before it a complete record after full hearing upon the merits, it could re-examine the case upon the merits, as it had done, and finding a fundamental error could not only order the injunction vacated, but dismiss the cause itself. Judge Aldrich regarded the opinion in this case as one of his best efforts. It is now and has been for many years the settled doctrine of all the circuits, having been approved by the Supreme Court of the United States in *Smith* v. *Vulcan Iron Works*, 165 U. S. 518. It was undoubtedly an important and far-reaching decision, but it has seemed to me that his opinion in *Fenno* v. *Primrose*, 119 Fed. 801, decided in January, 1903, was quite as far-reaching and broad in its vision. The questions under consideration were entirely new. The conclusion which he reached established the rule for this circuit and was followed in some other circuits. And in 1920, after the lapse of seventeen years, the Supreme Court in the case of *Ex Parte Peterson*, 253 U. S. 300, approved the decision of Judge Aldrich and gave him the credit for having blazed the way.

Two questions were involved: (1) The power of the Federal Court, on its own motion and without the consent

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of the parties, to appoint an auditor in an action at law, where, under the Constitution, the parties were entitled to a jury trial; and (2) the power of such a court to regulate the compensation of the auditor and determine where the burden of such compensation should rest,—there being no federal statute authorizing a reference to an auditor, defining the use that might be made of his report, or providing how the expense should be borne. In discussing these questions he said in part:

"Where a case within the jurisdiction of the court is presented, and the parties are entitled under the Constitution to a jury trial, and where the accounts are so numerous and confused that it would be impossible for a jury to comprehend and intelligently decide it, by reason of the complexity and diversity of the issues and items, unless they are simplified by a preliminary investigation, and where for that reason it would be impossible for the court to administer justice between the parties unless such preliminary investigation and simplification are had by way of preparing the case for the ultimate tribunal, it cannot be possible that the power of the federal court to do justice hangs solely upon the question whether there is a practice in the state court that the fees or compensation of such preliminary investigation may be taxable as costs. Under such conditions, and in the absence of a federal statute we have no doubt of the power of the circuit court to direct a preliminary investigation in a proper case, and to designate a suitable person as an officer of the court to call the parties before him, as a tentative tribunal, to simplify the items and the issues in order that the case may be intelligently presented to a jury.

* * * * *

"The doctrine which authorizes the appointment of such a preliminary tribunal is one of judicial necessity, and the exercise of authority in that direction is based upon a finding, under rules of legal discretion, that the case cannot be dealt with intelligently in its then condition, and under the same necessity, and under guidance of the same rules of discretion, the court may ascertain and determine where the burden of such an investigation shall rest.

* * * * *

"Although the jurisdiction of federal courts is special and limited, procedure therein, unless regulated by statute, must necessarily, in respect to cases within the jurisdiction of such courts, expand upon conservative lines to meet exigencies created by new conditions, to the end that they may administer the rights of the parties upon principles of justice not conflicting with the rules of the common law."

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He was not only interested in matters pertaining to the development of the law and the better administration of justice, but he took delight in the investigation and decision of questions having an artistic touch and calling for beauty of expression. I remember in particular a case which he decided March 4, 1921, in the District Court for Massachusetts,—*Lennox, Inc.* v. *Jones, McDuffee & Stratton Corporation*, 271 Fed. 511. That was a suit for infringement of a design patent and for unfair competition. I recall seeing the beautiful china which he had before him and the joy he took in discussing and describing the figures and designs which it bore. In stating the case and describing the plaintiff's article in that opinion, he used the following language:

"The case has reference to a patented design for a plate or similar article. The design is particularly ornamental, and was the result of large expense in the line of artistic work, with the result of a rare combination of artistic lines, scrollings, and birds attractively posed, or poised, including a Chinese tree with figures of butterflies, strikingly wrought, all intended for the center of the ware. The Chinese tree was old, as counsel concede, and as everybody knows.

"With the design, as it was brought out, were combined with the marginal scrollings peculiarly attractive shades and colorings, interspersed with the figures of birds in brilliant and varied plumage, artistically poised within shapely panels, in accordance with the design pattern. Yet the Lennox bases its claims more upon the design pattern than upon colorings and shades, yet claiming that the conbination of colors and shades is an element to be considered; and this is so, I think, because it is a market production which strongly appeals to the artistic eye."

And it seems that he regarded the conduct of counsel and parties in the cause as quite compatible with the ware which he had been describing, for he said:

"It is gratifying and refreshing to say that counsel and parties have conducted their litigation with fairness and dignity, each side to the other.

"If all litigation were to be conducted with as little 'bad blood' as has been shown here, 'bad blood' being an expression sometimes used to express heated legal controversy, and if parties and counsel in all cases

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should exhibit the fine quality of courtesy which has been shown in this hearing, the difficulties of judges, having for a time the task of deciding cases, would be lessened."

He also enjoyed writing opinions which presented in a mild way an opportunity for wit and humor. In March, 1916, there was pending in the Court of Appeals the case of the *Post Publishing Company* v. *Murray*, 220 Fed. 773, a proceeding in equity brought by the Publishing Company asking to be relieved from an order of the Boston postmaster, made under the direction of the Department at Washington, excluding certain issues of the *Post* from the postoffice and from the mails. These issues of the paper contained an advertisement in which were included pictures of headless women shoppers. The advertisement was in part as follows:

"Attention, Ladies!

"During this week *Post* Photographers will take snapshots in the Busy Boston Shopping District of Fifty Women Shoppers.

"These pictures will be developed and illustrations made in the usual way, and then their Heads will be Cut off!

"The Headless Pictures will be published—twenty-five in next Saturday's *Post* and twenty-five in next Sunday's *Post*—numbered, but without names.

"The ladies photographed are invited to identify the Headless Photos.

"A five Dollar Gold Piece for each Identification."

By the Act of March 4, 1909, it was provided that no newspaper or publication of any kind "containing any advertisements of any lottery, gift enterprise or scheme of any kind offering prizes dependent in whole or in part upon lot or chance . . . shall be deposited in or carried by the mails." It was under this statute that the issues of the paper were excluded and the question in the case was whether the advertisement presented a scheme of chance prohibited by the statute. The case arose about the time that the short dress craze in women's costumes came into vogue. In the court's opinion Judge Aldrich said:

"Under this curious advertisement, which involved pictures of headless women in street costume, there was nothing for the woman who was

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curious enough to be in the shopping district at the appointed time to pay, to buy, or to lose by failure of identity, and while losing nothing in the event of failure, her gain was to depend, not upon chance, in the ordinary acceptation of that term as used in the statute, but upon the fact of identity. If she established her identity through the instrumentality of the headless picture, she was to get the $5 gold piece, and if she failed to establish her identity she lost nothing, and her comforting compensation would happily result through the satisfaction of feminine curiosity; and in the given individual instances the publisher was not to gain anything by the fact of identity or failure of identity, but was to lose if the fact of identity was established. Thus the conclusion must be that there was no special intent to cheat or induce members of the public into buying something, or paying something for a chance. Instead of being that, it was a situation in which there was a general intent and general purpose to present something which the publisher thought would be attractive, and which would catch the eye and increase the circulation of the paper. We view this curious conception more as a playful one, though slightly sportive, and as one possibly involving the idea of burlesquing a little the street costume of women, thereby attracting public attention, with the view of increasing the circulation of the publication, rather than as a deliberate scheme to wrong members of the public."

His reading was not confined to law. In his periods of relaxation he forgot the monotony of the daily grind by excursions into the best literature and matters of historical interest. He read much about the history of his country and the lives of men who had participated in the affairs leading up to the organization of our government and its subsequent development. He was particularly interested in the battles of the Civil War and never felt more at ease than in a discussion of the maneuvers that took place in the various battles and of the officers and men who participated in them.

He devoted much time and effort to the preparation of addresses of a historical and biographical nature, which he delivered before different organizations or upon some special state occasion. I will not attempt to give a list of them, but they were numerous and give ample proof of his forensic powers and his aptitude as a writer.

On the 8th day of July, 1921, he met with an accident

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from which he never recovered. I saw him about six weeks after it occurred. He had then improved to a certain extent and was endeavoring to take the situation philosophically, entertaining the hope of being able to return to his work. But it was evident that the shock which his mental and physical systems had sustained was so great that it was wholly improbable that he would realize his hope, and after a few weeks more of suffering and pain, on the 15th day of September, he passed away. When such a man as he leaves us, the circle of friendship is sadly shattered and the world is poorer.

To use his own words spoken of another:

"Whether he talked of the closer and sweeter companionships of life;—the sports of the woods, the streams, and the lakes; the reposeful life of the camp, in the forests, under the starlit blue skies of the north; the magic spell of the wondrous eloquence of Ingersoll; the strangeness, and the mysteries of Rufus Choate; or of Webster and his cavernous eyes, and his stately walk;—he was ever a man of fascinating interest."

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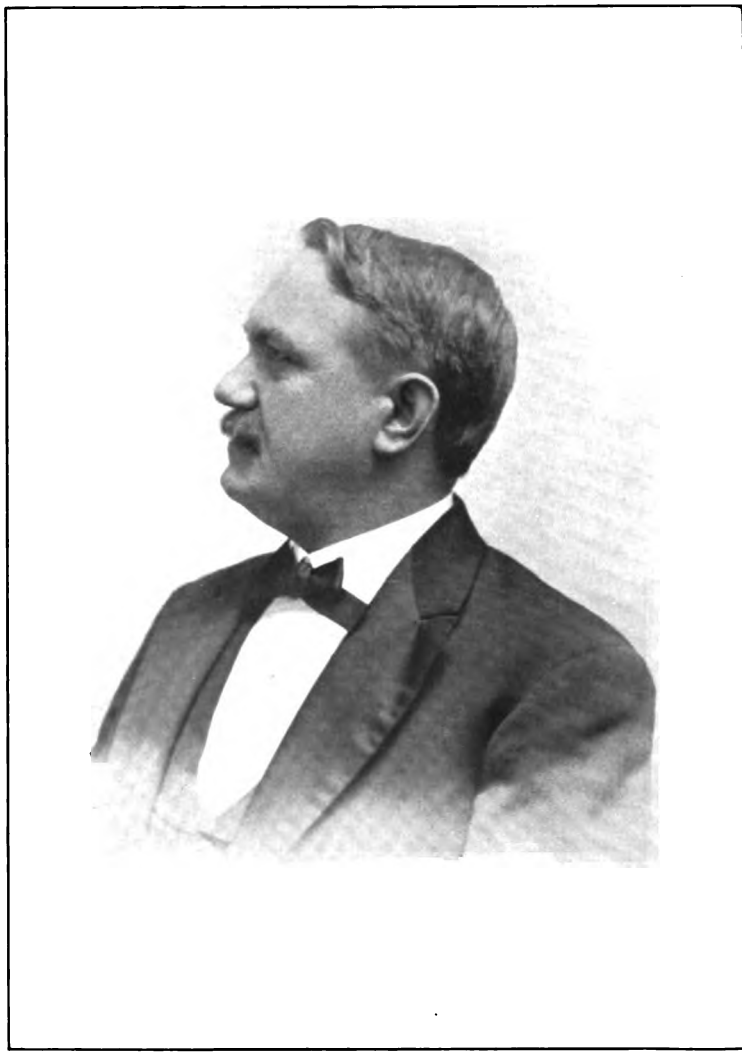

ARTHUR LOWELL FOOTE

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ARTHUR LOWELL FOOTE.

BY LOWELL S. FOOTE OF SALEM, MASSACHUSETTS.

On April 27, 1921, Arthur Lowell Foote died at the Huggin's Hospital in Wolfeboro after an illness of over a year. He had practiced law in Carroll and Strafford Counties for 34 years.

He was born December 25, 1863, in Lewiston, Maine, the youngest son of William Lowell and Eliza Ann (Meserve) Foote. His family was of old New England stock, founded in this country by Nathaniel, who settled in Wethersfield, Connecticut, having been born in England in 1593.

William Foote had spent his early life in South Berwick, Maine, and during Arthur Foote's infancy he moved his family back to that section of the country, making his home in Somersworth, New Hampshire, then called Great Falls. There Arthur Foote received his early education, graduating from the high school in June, 1883. In July of that year he took up the study of law in the office of Hon. George E. Beacham.

November 22, 1886, Judge Beacham opened a branch office in Wolfeboro Junction, now called Sanbornville and, although not yet admitted to the bar, Arthur Foote was sent to take charge of it. The following spring, on March 11, 1887, he was admitted to the New Hampshire Bar and became the law partner of his preceptor, continuing his residence in Wolfeboro Junction. The firm was later extended to include the Hon. Arthur H. Wiggin and was known as Beacham, Foote & Wiggin, with offices in Somersworth, Wolfeboro Junction and Farmington. Upon the death of Judge Beacham the partnership was dissolved and from that time on Arthur Foote continued the practice of law alone.

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He was married June 15, 1888, to Carrie Bell Sanborn, daughter of the late John Sanborn of Somersworth. Their one son, Lowell Sanborn Foote, born June 2, 1891, is now in the textile machinery business in Salem, Massachusetts.

It might be said that Arthur Foote was of the old school of lawyers; during his student days he studied the eccentricities of the leading lawyers of that day, he enjoyed telling anecdotes about them, and I do not think it does him an injustice to say that he took pride in being like them in many ways. His office was not conducted along modern lines, he preferred the pen to the typewriter, and he never employed a stenographer. His desk appeared to be a chaos of littered papers, there was no elaborate filing system, and yet he could locate things almost instantly.

He was equipped with a remarkable memory, his mind was virtually an index to his law reports, and it was a common thing for him to cite the volume and page where a point in question would be covered.

Had his field of work been larger he undoubtedly would have devoted his attention to the practice of criminal law, for he had a decided fondness for it. He was connected with a large part of such work in Carroll County and a considerable portion in Strafford, the most important being the Small and Hatch Murder Trials.

During his school days he became interested in surveying and received instructions from a famous civil engineer of that time, named Morse; this knowledge was later of great value in many of his cases in which there was litigation over land bounderies. In fact it was always his custom to prepare himself most carefully in any technical field so that in the examination of expert witnesses he could question them intelligently.

Although interested in politics he held but few public offices. He preferred to mould sentiment so that others might serve. He was elected county solicitor in 1892 and served one term. His work as solicitor is best known by his breaking up and prosecuting the band of horse thieves that

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was terrorizing the county at that time. Later he served on the school board of Wakefield and in 1920 was sent to the Constitutional Convention, where he was a member of the Legislative Department. In commenting on his work there it was said in *The Concord Evening Monitor:* "He is another of the type of men . . . who could be sent to the Legislature with profit to the State for an indefinite period."

During the World War he gave himself most unsparingly to work in its cause. Undoubtedly he gave far beyond his strength, for it was not long after the close of the war that the breakdown, finally ending in his death, took place. He was chairman Fourth Liberty Loan Committee for Wakefield and Brookfield; county chairman Civilian Relief American Red Cross; member Permanent Legal Advisory Board for Carroll County; chairman Board of Instruction for Carroll County; member Speakers Bureau, American Red Cross, Liberty Loan and War Savings Stamps for New Hampshire. Some of the finest and noblest speeches of his life were made in this work.

He was a Mason and Past Master of Libanus Lodge No. 49 of Somersworth, and he was for several terms president of the Carroll County Bar Association.

Arthur Foote loved the country, he loved nature, and his only recreation was in his flower garden. It is not surprising that when he moved his law office to Dover in 1909 he did not find contentment there, he missed the country life, and in April, 1914, he returned to Sanbornville. There in the very prime of his life, with new goals yet to be reached, for the sacrifice of his war work had given him an even broader vision, his work was brought to a close. And yet without those added pages to his history he lived a life worth while.

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FRANK DUNKLEE CURRIER.

BY EDWARD A. BARNEY OF CANAAN.

Frank Dunklee Currier was born at Canaan Street, October 30, 1853. He was the elder son of Horace and Emma (Plastridge) Currier and one of five children. Educated during his younger years at the local school, he took his later courses of study at the Concord High School, Kimball Union Academy and at the Hixon Academy in Lowell. As a boy politics and the law held for him the keenest interest, and after his school days were over he began the study of the latter profession in the office of United States Senator Austin F. Pike, at Franklin, where we may imagine his desire for a public career was stimulated by the eminent example of the head of the firm. Referring to this period of his life, many years afterward, Mr. Currier once said that while on a fishing trip with Cyrus A. Sulloway of Grafton, a young man considerably his senior, the two exchanged confidences as to their ambitions. The ultimate aim of each youth proved identical—a seat in the National House of Representatives.

Mr. Currier was admitted to the bar in 1874, opening an office in his native town, where the kindly advice and counsel of Hon. George W. Murray, long afterward remembered, was an influence in establishing the young lawyer on the road to a successful practice. His first political success came with his election to the State Legislature in 1879 as a representative from Canaan. He was elected clerk of the New Hampshire Senate in 1883 and filled this office for four years. When his time came to serve in that body as a member, in 1887, his wide knowledge of its parliamentary workings thus attained made him easily the logical choice among the candidates for its presidency, and he presided

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over the Senate during that session with a display of ability that stamped him as a coming man in New Hampshire's public affairs. He was for many years secretary of the Republican State Committee and in 1890 received the appointment of naval officer for the port of Boston, where he remained four years. After four years chiefly devoted to his profession, he re-entered public life through his election for the second time to the House of Representatives at Concord. Here the sharpest contest of his career developed in the race for the speakership, which was also desired by Col. R. K. Pillsbury of Derry, but the Canaan man won, and how efficiently he handled legislative proceedings that winter was demonstrated by a final adjournment before town meeting—a previously unhead-of accomplishment.

The following year he began in earnest his campaign for Congress, a step that he had delayed taking out of deference to the incumbent from the Second District, Hon. Frank Clarke of Peterboro. His overwhelming victory in November, 1900, was the beginning of a long series of triumphs at the polls after an utter lack of opposition for the nomination. How well he merited the loyal support given him for twelve years by his constituents was pictured most convincingly in his record at Washington. He came to the front with a rapidity that was remarkable and his period of congressional apprenticeship scarcely endured past his first session. During his second term he was appointed chairman of the Committee on Patents, which under his vigorous leadership was developed into one of the important branches of the House, its membership including Champ Clark, Hon. Francis Burton Harrison, later governor-general of the Philippines, William Sulzer, afterward governor of New York, and many others of national repute. He was ranking member of the Committee on Accounts, a vital administrative body of the House, and later chosen to serve on the important Rules Committee, created as an outgrowth of the insurrection against the Old Guard in Congress in 1910. A signal honor given him by fellow members of his party was

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the chairmanship of the Republican congressional caucus, where the service he performed in maintaining as great a degree of cohesion as was humanly possible between old-line Republicans and those of insurgent tendencies was one that never could be overestimated.

Mr. Currier's greatest contribution to the nation was the successful passage and final enactment of the Smoot-Currier Copyright Law, originally introduced by him early in 1906 and carried to President Roosevelt for his signature in the closing hours of the 60th Congress, after three arduous years devoted to the reconciliation of warring interests. This bill proposed new features of legislation that conflicted with the desires of the great Edison Phonograph Company, the Victor Talking Machine Corporation and the Columbia Phonograph Company, besides innumerable other manufacturers of music reproducing instruments. Another privilege demanded by the greatest authors of the country was a radical extension of the life of a literary copyright, against which naturally there was objection raised by powerful publishing interests. It was a man's-sized job that confronted the author of a bill that somehow had to be contrived, through endless abridgment, amendment and redrafting, to please everybody, and much bitterness and intensity of feeling developed before a committee report could be agreed upon. President Roosevelt said in signing the bill that it was the session's most commendable piece of legislation, and the pen with which he affixed his signature became from that moment one of Mr.Currier's most treasured possessions. Decided changes and improvements in the then existing patent and trade-mark laws resulted largely from the efforts of the New Hampshire Chairman.

No man labored more diligently or unceasingly for the success of the White Mountain Forest Reserve Act than did Mr. Currier, and untold weary hours were devoted to preparation for the struggles that had to be made session after session before critics were silenced, opponents outgeneralled

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and one of New Hampshire's most earnest desires made an accomplished fact.

A hard-working committee member, Mr. Currier seldom participated in the general debates of the House, but his influence over that gathering was exerted frequently in a more commanding fashion from his occupancy of the Speaker's chair. Once his rare ability as a parliamentarian had been recognized by Speaker Joseph G. Cannon, it was put to work early and often in the presiding office, and when especially intricate and troublesome legislative complications threatened to develop in the sessions of the committee of the whole House, the New Hampshire man was invariably chosen for this service. He was equally popular with Democrats and Republicans alike, but he could rule with an iron hand when occasion demanded, and the writer has more than once witnessed the abject subsidence of a reprimanded member who became too pugnacious in debate. But as for himself, throughout his long career at the Capital, his personal record, like his public service, ever sustained the dignity and the credit of the state he was chosen to represent. Always a gentleman in every sense of the word, his courtesy and forbearance toward associates and subordinates was unfailing. Never did he wound intentionally by ill-considered utterances, and although impetuous of speech and manner, a deeply considerate heart beat beneath every display of impatience or nervousness. On one occasion at the beginning of an exceedingly trying day, dreaded alike by himself and his office force, Mr. Currier spoke to the colored messenger. "Sam," said he, "we've got a frightful forenoon's work ahead of us, and if I get irritable and speak to you too sharp, don't you mind it at all." And Sam's feelings had no occasion to be ruffled on that or any other occasion.

While he possessed his health and strength Mr. Currier's influence and prestige gained steadily in New Hampshire, and after the discordant preliminary campaign and state convention of 1906, we think it is not too much to say that he became the strongest and most popular Republican

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figure in the state. We are alike confident in the belief that had he given the slightest encouragement to his scores of admirers and would-be supporters in the Legislature of 1907, his election as the successor to Hon. Henry E. Burnham of Manchester would have been inevitable. But he refused to consider the honor of being named as a candidate and, although all through the afternoon preceding the Republican senatorial caucus the telephone wires between Concord and Washington were kept warm with the importunities of friends beseeching him to allow his name to be used at the meeting, his dissent was emphatic. He was big enough to be United States Senator, but he was also big in his recognition of his duties and opportunities in the House and his consideration for the wishes of a friend for whom he felt an exceptional personal attachment. Nevertheless Mr. Currier received 27 complimentary votes in that caucus, running ahead of all of Senator Burnham's active opponents.

Governor Felker appointed Mr. Currier justice of the Police Court for the district of Canaan in 1913, and he held this office two years, declining a nomination for the municipal judgeship when the present court was created. He was for many years moderator of the Canaan town meeting, and like Senator Lodge of Nahant always came home from Washington when the needs of a local election demanded.

Politicians of the older school will remember him for his clarity of vision, his sound level-headedness in the conduct of state campaigns and his unerring instinct in sensing the trend of the times politically. He was one of the first to divine the Republican reverse of 1910 and the still greater catastrophe of the succeeding campaign, but from the wreckage and ruin of that political upheaval his prophecy of the eventual restoration of the Republican party to strength and greatness was confidently expressed.

Mr. Currier married Mrs. Adelaide K. Sargent of Grafton, May 31, 1890, building during that year the fine residence at

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the corner of Main and School streets in this village ever since occupied by him as his home. Mrs. Currier's death, by a strange coincidence, preceded his passing away by exactly five years. His fondness for his home and his love for Canaan were among his marked characteristics, and his return to greet and mingle with his old acquaintances and friends was eagerly looked forward to by him after every prolonged absence.

During his later years of incapacity, though bereft of the helpmeet who had accompanied him from the days of his early career, he was yet fortunate in having with him his niece, Miss Edith M. Bucklin, whose devoted care and ministrations robbed the weary days of invalidism of their darkest shadows, and his nurse and attendant, Mr. Andrew J. Kyle, whose responsibilities have been so dutifully fulfilled. No efforts could have been more conscientiously put forth in the amelioration of his physical trials than theirs.

To say that his townspeople are as one in mourning his loss would be an idle expression. How deeply he was concerned in the lives and affairs of those who knew him most intimately is brought to one's mind already by the recurring realization of the fact that no longer can one's problems be referred to his sympathetic understanding and able counsel. His memory long will endure undimmed and revered, a heritage of a life illustrious and well-lived.

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NATHANIEL W. HOBBS.

BY ARTHUR P. MORRILL OF CONCORD.

Nathaniel White Hobbs was born in Boston, Massachusetts, November 1, 1873, and died in Concord, after a long illness, on August 2, 1921.

He was descended from good New England stock, his maternal grandparents being Nathaniel White, a pioneer in the railroad and express business in New Hampshire, and Armenia S. White, known far and wide for her generous and intelligent philanthropy and outstanding good citizenship.

His father was Horatio Hobbs, whose family has long been prominent in southeastern New Hampshire and Massachusetts.

Mr. Hobbs was educated in the public schools of Concord, Phillips Academy, Andover, Yale University and Harvard Law School.

During his school and college days he was well known as an athlete and particularly as a baseball player, and in later life he held the golf championship of the state.

After his admission to the bar he was for some time associated with Hon. Henry F. Hollis, but later continued the practice of law by himself.

He was always a Republican in politics and took a keen interest in public affairs.

For many years Mr. Hobbs was a member of the Concord City Government, first as a councilman, then ward alderman and alderman-at-large, and in 1916–1918 he served as mayor.

Quiet and reserved in manner, he greatly enjoyed the society of friends and acquaintances and belonged to numerous social and fraternal organizations.

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During all his life he was affiliated with the White Memorial (Universalist) Church of his home city, which church was named for his mother's family.

On October 14, 1909, he married Mary L. Leaver, daughter of William M. and Mary A. Leaver of Concord, who survives him, as does his mother and sister, Mrs. Henry F. Hollis.

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APPENDIX.

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REPORT OF NEW HAMPSHIRE MEMBER OF ADVISORY COMMITTEE ON LEGAL EDUCATION AS TO CONDITIONS IN THAT STATE RELATIVE TO LEGAL EDUCATION, ADMISSIONS TO THE BAR, AND ADOPTION OF NEW EDUCATIONAL STANDARD RECOMMENDED BY AMERICAN BAR ASSOCIATION.

To Hon. James W. Remick,
President, New Hampshire Bar Association,
Concord, N. H.:

Last year a special committee of the Section of Legal Education and Admissions to the Bar of the American Bar Association, of which Elihu Root was chairman, made a study of legal education and formulated a series of resolutions looking toward higher standards of professional training, the principal feature of these resolutions being that every candidate for admission to the bar should, as a prerequisite to examination, give evidence of graduation from a resident law school having at least a three years' course and requiring at least two years of preliminary study in a college. These resolutions were adopted by large majorities by the American Bar Association at its annual meeting last August and by the National Conference of Bar Association Delegates at a special session held at Washington in February. The latter conference also made provision for an Advisory Committee on Legal Education, consisting of one representative from each state, to cooperate with the Legal Education Section of the American Bar Association in encouraging the improvement of legal education and promoting the adoption of the standards advocated in said resolutions.

Presumably because of my experience as the senior member in term of service of the state board of bar examiners,

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you named me in March as the New Hampshire member of this committee, notwithstanding my statement that I was not disposed unqualifiedly to urge the immediate adoption in this state of the fore-going educational standard. As I cannot attend the coming meeting at San Francisco you have asked me for a report, for transmission to that meeting, summarizing the facts as to New Hampshire conditions and my views as to said educational standard.

Appended hereto are four statistical tables compiled from our bar-examination records. One cannot generalize too confidently from examination results in one small state; but the tables are presented for what they may be worth as evidence of our present admission standards and educational tendencies, as the best test locally available of the kind and *quantum* of education needed by the average law student, and in the hope that the Advisory Committee may be able to obtain similar statistics from other and larger states and thereby throw valuable light on current legal education and bar-examination problems.

1. PAST AND PRESENT REQUIREMENTS FOR ADMISSION TO NEW HAMPSHIRE BAR, AND EXPLANATION OF PRESENT EXAMINATION SYSTEM.

Prior to 1842 the statutes of the province and state contained no provision as to the qualifications for admission to the bar; but as early as 1788 the New Hampshire Bar Association of that period adopted rules on the subject providing that "in case a candidate for admission as a student in an office has not had a degree in the arts, he shall, excepting a knowledge of the Greek language, be duly qualified to be admitted to the first class of students of Dartmouth College"; that college graduates should be required to study in an office three years, and *non-graduates five years;* and that no attorney should receive a student in his office without the consent of the county bar. Those rules apparently remained in force without substantial change and with tacit judicial sanction until 1842;

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and in 1805, out of a total of 106 New Hampshire lawyers, 77 were college graduates. (1915 President's Address of E. G. Eastman, Proceedings of N. H. Bar Association, N. S., Vol. 3, *pp.* 334–5.)

These were stringent requirements for those days, and while they contributed to the training of some of the ablest lawyers of the time, including Jeremiah Mason and Daniel Webster, they ultimately produced a severe legislative reaction. The Legislature of 1842, evidently considering the bar too exclusive and deeming it necessary in the interest of individual freedom of occupation to take the matter out of the hands of the lawyers and judges, inflicted upon the state for the succeeding thirty years the following statutory atrocity: "*Any citizen* of the age of twenty-one years, of good moral character, on application to the superior [supreme] court, shall be admitted to practice as an attorney." (R. S. 1842, *c.* 177, *s.* 2; C. S. 1853, *c.* 187, *s.* 2; C. S. 1867, *c.* 199, *s.* 2.) The result was the encumbering of the bar with a class of ignoramuses known as "statute lawyers." (Address of E. G. Eastman, *supra.*)

This situation was finally remedied in 1872 by the simple device of procuring the insertion of the phrase "and suitable qualifications" after the word "character" (Laws 1872, *c.* 36), and as thus amended the act of 1842 is still in operation (P. S., *c.* 213, *s.* 2). The effect of the inconspicuous amendment was to restore the court's common-law power of determining the "suitable qualifications" of its own officers (Ricker's Petition, 66 N. H. 207, 211); the court promptly exercised that power by adopting rules requiring three years' law study and providing for examination either by the court itself or by a committee appointed by it; and by 1878 the Examining Committee had become a permanent body of three members conducting semi-annual written examinations for the state as a whole, thus making New Hampshire the pioneer state in establishing the central examining-board system (Bulletin 15 of Carnegie Foundation, *p.* 102).

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Since 1878 there has been no substantial change in our admission requirements, except that the marked increase in applicants rejected during the past ten years indicates that we are in fact exacting a higher standard of proficiency. The matter of "suitable qualifications" is wholly in the hands of the Supreme Court and its examiners, and the only inflexible rules are that the applicant must have studied law at least three years and must attain an average of 70 per cent on the law examination. No particular amount of general education is arbitrarily required, but the number of applicants without a full high-school education or its equivalent has become negligible. The office method of law study is still permitted, but the proportion of applicants without at least a partial law-school training is very small. No law-school degree, however, is accepted as a substitute for examination.

The examination is now held only once a year, a rejected applicant is not ordinarily admitted to another examination without proof that he has devoted the intervening year exclusively to further study under competent instruction, and more drastic conditions are frequently recommended by the examiners and imposed by the court in particular cases. To minimize the element of luck the examination is rather long, consisting of ninety printed questions; it is devoted almost wholly to the basic branches of general law as distinguished from branches of minor importance or local peculiarities (New Hampshire is not a code state); the questions are mainly hypothetical cases, designed to test the student's understanding and powers of discrimination and reasoning rather than his memory; and in marking the answers, unless a question is very elementary, more importance is attached to the merits of the reasoning than to the strict correctness of the result. Each examiner independently rates every answer, marking from a maximum of ten points (=wholly satisfactory) to a minimum of zero (= wholly without merit), and their combined or averaged totals determine the applicant's percentage. As a further

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precaution against effective "cramming," questions are not only not repeated at successive examinations unless at considerable intervals or in altered form, but the used question papers are neither made public nor permitted to be taken away by the candidates.

A bar examination of this length and character may not be practicable in every state; but it is our belief, based on our experience, that such a system, administered by competent examiners, affords a very satisfactory test of a candidate's fitness.

2. EXPLANATION OF, AND COMMENTS ON, THE ACCOMPANYING TABLES.

The annexed *Table A* shows the number of applicants who took the New Hampshire Bar examinations and the number and proportion of them who were passed during each of the four five-year periods from 1903 to 1922, inclusive, the figures being given separately as to applicants examined for the first time and those taking a subsequent examination after one or more rejections. It discloses four material facts, namely:

(1) The total number of applicants of both classes examined during the past twenty years is only 378, or an average of 19 per year (the largest number in any one year being 25). It is thus comparatively easy to conduct a comprehensive and searching examination and give due consideration to the marking.

(2) The number of persons seeking admission to our local bar is not appreciably increasing, the increase in the number examined during the past decade being confined to applicants re-examined after rejection and accounted for by the growing ratio of rejections. Only 72 men have taken the examination for the first time during the last five years, as against 70 for the five years 1903–7, so that we are not as yet facing any critical problem of overcrowding.

(3) During the last five years we have passed less than half of the first-attempt candidates and only about one in

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four of those attempting another examination after rejection. These ratios hardly indicate a lax admission standard; and, since candidates once rejected usually avail themselves to the full of "cramming" facilities, they are a somewhat striking refutation of the assertion of one of the delegates at the Washington Conference (printed proceedings, *p.* 79) that "No Bar examination has ever been devised which cannot be passed by proper cramming in a very brief period." It may also be remarked that men already passed and admitted in some other jurisdiction are not infrequently numbered among the rejected applicants.

(4) There has been a very marked increase in rejections during the past decade. Comparing the last five years with the five years 1903–7, the proportion of applicants passed has decreased from 77 to 47 per cent in the case of those examined for the first time, from 82 to 27 per cent in the case of those re-examined, and from 78 to 41 per cent for the two classes combined. That this is not due to unfair examinations is indicated by the fact that each of the 13 Harvard Law School graduates examined during the decade passed at the first attempt (Table B). Neither is it due to a decrease in the average *quantum* of university education possessed by the applicants, for Tables B and D show that there has been no such decrease. It is accounted for partly by more rigid marking, partly by the effect of the war in interrupting the studies of the better class of law students at our universities, and partly by a larger proportion of applicants whose racial or native mental endowment is not favorable to the ready assimilation of our legal concepts.

Table B classifies according to five educational groups the 157 applicants examined for the first time during the last ten years, and shows what proportion of each group was passed in each half of the decade and in the decade as a whole. Group I consists of the Harvard Law graduates, Group II of the graduates of other resident day law schools having the two or more years of general college training

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called for by the American Bar Association's proposed standard, Group III of graduates of such law schools without that amount of college training, Group IV of the candidates possessing that amount of college training who were not graduates of such law schools, and Group V of those who had neither a degree from such a law school nor two years' general college education. Only a few of the 54 members of the last two groups were exclusively office trained, most of them having either a full course (without degree) or partial course at a day law school, or a so-called degree from an evening or correspondence law school. The notable facts shown by this table are:

(1) The 100 per cent record of success of the Harvard Law graduates, as compared with a successful percentage for the decade of only 62 per cent in the case of the graduates of other law schools whose training substantially measured up to the National Association new standard.

(2) The fact that during the last five years the successes have exceeded the rejections only in those groups (I and II) whose training substantially conformed to that standard.

(3) The very low percentage passed (27 per cent for the decade and 20 per cent for the last five years) of the applicants (Group V) who satisfied that standard in respect neither to college nor to law-school training.

(4) The marked difference (62 per cent versus 46 per cent for the whole decade and 59 per cent versus 39 per cent for the last five years) which the possession (Group II) or lack (Group III) of two years' college training made in the success ratio of the law-school graduates, even when Harvard is excluded; and the fact that the success ratio has been decidedly greater among the non law-school graduates with that amount of college training (Group IV) than among the law-school graduates without it (Group III). These facts tend to the conclusion that, *as between adequacy of general education and method of professional study, the former is the more important element.*

Table C takes up the same 157 applicants by the same

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educational groups, and shows the number and proportion in each group whose examination ratings were respectively high, intermediate and low. As might be expected, it shows in general a close correspondence between the quality of the applicants' work at the examinations and their educational records. The proportion of candidates having intermediate markings between 65 per cent and 74 per cent was lowest in Groups I and V, and highest in the intervening groups. Sixty-nine per cent of the Harvard Law graduates attained a rating of 75 per cent or over, while in Group V (applicants who were neither law-school graduates nor college trained) only 15 per cent received such a mark and 54 per cent were rated under 65 per cent.

Table D summarizes the results of the two preceding tables when Groups I and II are combined as a single class substantially satisfying, and the other three groups as a single class not satisfying, the National Association's proposed standard. It strikingly demonstrates the advantage to the average student of the amount of university education called for by that standard, for the proportion of applicants passing on first attempt during the last ten years has been 72 per cent in the first class as against only 45 per cent in the second, and the proportions attaining a rating of 75 per cent or higher were 47 per cent and 21 per cent respectively, while the proportions given very low ratings were several times as great in the second class as in the first. The table also discloses, however, that less than one-third of our applicants during the past decade have been law-school graduates with two years' college training; and that the applicants not so educated have supplied one-half of the 20 men receiving the exceptionally high rating of 80 per cent or over, and one-half of the 45 receiving the very satisfactory rating of 75 per cent or over. It is thus still true that individual capacity and industry can overcome educational handicaps, and the proposed standard would necessitate a radical change in the average *quantum* of university training of New Hampshire law students.

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3. THE PROPOSED EDUCATIONAL STANDARD IN RELATION TO NEW HAMPSHIRE CONDITIONS.

The stand taken by the American Bar Association and the Conference of Bar Association Delegates in favor of a better educated bar ought to commend itself to every lawyer who has the real interests of his country and profession at heart, and the benefits that would ultimately result from general adoption of the proposed standard are undeniable. The reasons why the conditions of the time call for a higher average level of professional education are clearly and convincingly set forth in the report of the Root Committee and the addresses at the Washington Conference, and the local statistics here presented sufficiently show the advantage of a college and first-class law-school training as compared with desultory office study, supplemented by an incomplete law-school course, but not prefaced by enough general education adequately to mature the student's mind. Furthermore, it is undoubtedly true that to require of the lawyers of the coming generation the measure of university training contemplated by the proposed standard would not only result in greater technical efficiency but tend to higher professional ideals.

Neither is there much force in the familiar suggestion that such a standard would exclude from the profession the potential Abraham Lincolns of coming years. The present facilities for self-help and scholarship aid in the acquisition of university training make such training generally accessible to impecunious young men of real force and promise, except in the occasional instances where they are burdened with dependents. But I cannot feel that it would be the part of wisdom, or that the National Association and Conference ought to expect us, to attempt to make New Hampshire one of the first states to put the new standard into actual operation.

In the first place, this is a small commonwealth, with no state university, and having no law school of any kind within its borders. There are, or were when the Carnegie

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Foundation's list was published last year, only two law schools in New England requiring any preliminary college training, and both of these (Harvard and Yale) exact a year more of such training than the proposed standard calls for. Under these circumstances, until the larger states in our vicinity whose schools most of our law students attend adopt that standard, or until the eastern law schools of the better class generally conform to it of their own volition, it seems hardly fair or practicable to force such a standard upon our own students by an inflexible rule.

In the next place, we have as yet no critical bar-admission problem. As already shown herein, our applicants are not increasing, and our examination machinery is quietly but effectively eliminating the incompetent. Of 16 candidates (out of a total of 23) rejected in 1921, only five returned for re-examination this year, each of the five was again rejected, and we are perpetually barring two of them from taking another examination in this state. Instead of our bar being threatened with submergence by an influx of men of alien races and traditions, there are to-day hardly enough such lawyers in the state to subserve the simple every-day needs of the non English-speaking elements of our population.

Finally, the possibility that so sweeping an innovation might produce a legislative reaction similar to that of 1842 and endanger the court's control of the subject of "suitable qualifications" cannot prudently be ignored. Our legislative situation is peculiar, the popular branch being a body of approximately 400 members, dominated by the small towns and usually with too small a sprinkling of lawyers to fill the ranks of the Judiciary Committee. The present high percentage of rejections by the examining board attracts no public attention or concern; but the result of adopting an inflexible rule barring from entrance to the profession every person without five years of university training, regardless of his individual qualifications and in advance of such action by neighboring states, cannot be foretold with confidence.

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The Supreme Court can put the proposed standard into effect whenever it deems that course expedient, but I do not understand that it is disposed to do so at the present time; and for the foregoing reasons I personally believe that such action by New Hampshire can, without substantial public detriment, and should as a practical proposition in view of local conditions, await adoption of the standard by at least some of the larger neighboring states where there is more pressing occasion for its adoption. In the meantime, however, I agree with the former chairman of the examining board (address of the late E. G. Eastman, already referred to) that the principle of the rules of 1788 might well be returned to and the required period of law study considerably lengthened in the case of those students who have not received the proposed amount of university training.

Respectfully submitted,

FRED C. DEMOND.

CONCORD, N. H., August 1, 1922.

APPENDIX OF NEW HAMPSHIRE BAR EXAMINATION STATISTICS.

TABLE A.

Showing Proportion of Successful Applicants for Twenty Years, 1903–1922, by Five-Year Periods. "First"—Applicants Taking Examination for First Time; "Subsequent"—Applicants Taking Re-examination After One or More Rejections; "Total"—Both Classes.

	1903–7	1908–12	1913–17	1918–22	20 Year Aggregate
First:					
Examined.....	70	61	85	72	288
Passed.....	54	50	50	34	188
Rejected.....	16	11	35	38	100
Proportion Passed ..	77%	82%	59%	47%	65%
Subsequent:					
Examined.....	11	16	30	33	90
Passed.....	9	9	19	9	46
Rejected.....	2	7	11	24	44
Proportion passed ..	82%	56%	63%	27%	51%

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Total:					
Examined	81	77	115	105	378
Passed	63	59	69	43	234
Rejected	18	18	46	62	144
Proportion passed	78%	77%	60%	41%	62%

TABLE B.

Showing Successful Proportion, by Five Educational Groups, of Applicants Taking Examination for First Time During Ten Years 1913–1922. Group I—Harvard Law School Graduates; II—Graduates of Other Resident Day Law Schools With, and III—Graduates of Such Schools Without, Two or More Years of College Training; IV—Applicants With That Amount of College Training Not Graduates of Such Schools; V—All Others.

	I	II	III	IV	V
Five years, 1913–17:					
Examined	8	17	33	11	16
Passed	8	11	17	9	5
Rejected	0	6	16	2	11
Proportion passed	100%	65%	52%	82%	31%
Five years, 1918–22:					
Examined	5	17	23	17	10
Passed	5	10	9	8	2
Rejected	0	7	14	9	8
Proportion passed	100%	59%	39%	47%	20%
Total, 1913–22:					
Examined	13	34	56	28	26
Passed	13	21	26	17	7
Rejected	0	13	30	11	19
Proportion passed	100%	62%	46%	61%	27%

TABLE C.

Showing Proportion, by Same Educational Groups, of Applicants Attaining High, Intermediate and Low Percentages on First Examination During Ten Years 1913–1922. (Passing Mark=70%.)

	I	II	III	IV	V
Examined	13	34	56	28	26
80% or over	4	6	6	3	1
75–79%	5	7	5	5	3
70–74%	4	8	15	9	3
65–69%	0	9	15	1	5
60–64%	0	3	8	6	6
Under 60%	0	1	7	4	8

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Proportion 75% or over	69%	38%	20%	28%	15%
Proportion 65–74% ...	31%	50%	53%	36%	31%
Proportion under 65%	0%	12%	27%	36%	54%

TABLE D.

Summarizing Tables B and C with Groups I and II Combined as a Single Class Substantially Satisfying, and III, IV and V Combined as a Single Class Not Satisfying, the Educational Standard Recommended by American Bar Association.

	I and II		III, IV and V	
	Number	Proportion	Number	Proportion
Five years, 1913–17:				
Examined.....	25		60	
Passed.....	19	76%	31	52%
Rejected.....	6	24%	29	48%
Five years, 1918–22:				
Examined.....	22		50	
Passed.....	15	68%	19	38%
Rejected.....	7	32%	31	62%
Ten years, 1913–22:				
Examined.....	47		110	
80% or over.....	10	21%	10	9%
75% or over.....	22	47%	23	21%
Passed (70% or over) .	34	72%	50	45%
Rejected (under 70%).	13	28%	60	55%
Under 65%.....	4	8%	39	35%
Under 60%.....	1	2%	19	17%

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ADDRESS AT EVANSTON, ILLINOIS, JUNE 17, 1922.

Ethics in Business

BY ELBERT H. GARY

During the last decade the world's structure of civilization has been threatened, assaulted and damaged, even to its foundations. At times faith in a merciful and all-wise Providence has been the only perfect assurance of safety. We are emerging from under the clouds of doubt and fear into the sunlight of hope and confidence, and with feelings of gratitude we may calmly survey our somewhat battered institutions in order to determine what, if anything, can be done to repair and restore them and make them firmer and stronger than ever before. Our country is doing and will continue to do its part, and every citizen has a personal responsibility and must share in the work of reconstruction and readjustment.

A nation depends upon its citizenship for vitality and progress in the plans for rehabilitation which are decided upon. Its endeavor must correspond to the every-day practice of individuals.

With a desire to apply the observations made there has been selected for to-day the theme "Ethics in Business." Next to the establishment and observance of the laws of the land, of the highest importance are the questions pertaining to this subject.

For the purposes of this occasion the word ethics is defined as the science of moral duty—moral principles and quality in practice. Business is defined as any particular occupation or employment habitually engaged in for livelihood or gain. To quote Stockton: "I do not mean any Marie Antoinette business with milk pails decked with ribbons."

In a recent public address President Harding character-

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ized business as being "the biggest thing in the world." By this he may have meant and probably did mean, among other things, that business is necessary to human physical sustenance, which is fundamental in the consideration of all questions.

Business is not confined to any line of enterprise. It is in some degree involved in the success of every calling in life. To the extent that it is attached to any human attempt toward livelihood or gain these remarks will apply in due proportion. Big business, so called, is more liable to be exposed to the public view, but small business is no more exempt from moral responsibility.

It has been said, and some in this distinguished audience may agree, that in practice at least, the science of ethics has no application to business. You may refer to the threadbare injunction of the father to his sons: "Get money, honestly if you can, but get it," and similar alleged utterances. The Reverend W. H. H. (Adirondack) Murray said: "Many a man in prayer-meeting is a perfect saint, but in the shop or office he is an ordinary sinner." There is a widespread belief that a very large percentage of business is carried on without any regard to ethical questions.

Talking, as a business man, to men and women connected with or interested in and, in many cases, controlling large enterprises, I assert there has been good reason for believing business is occasionally unconscionably administered; though at the same time I aver that it sometimes appears the man most vehement in adverse criticism is himself unworthy and unprincipled.

It is deemed appropriate to be somewhat specific, and as the first illustration reference is made to business corporations for they represent large accumulated capital and the strength for good or bad which proportionally goes with it. As compared with individual enterprise corporations are no better and no worse. Attitudes and results depend upon the management by individuals. The degree of merit or moral turpitude only is involved.

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Not many years ago, perhaps not much more than a score, the managers of some of the large private business corporations apparently believed that if their conduct was within the strict and technical rules of law it was immune from public or private attack; that if the provision of no public law was violated the corporation should be permitted to secure unlimited profit and might treat indifferently its customers, its employees, its competitors and even the general public; and not a few officials, in consonance with the same line of reasoning, were inclined to take advantage of inside, advance information to promote their own pecuniary interests to the prejudice of the shareholders generally. By such as these moral principles were ignored.

By this régime the rule of might over right prevailed. In business the Golden Rule was given no thought, certainly no place, in the practice of this school and period.

Competition was tyrannical and destructive. Weaker competitors were forced out of business, often by means not only unethical but severe and brutal. The graves of insolvents were strewn along the paths of industrial development and operation. The financially strong grew stronger and richer. Instead of competition being the life of trade it was the death of trade. Instead of monopoly being destroyed, it was thus encouraged. Instead of increasing combination of capital being prevented it was, in self-defense, forced into existence. The preserved letters, written during this period by owners and managers of some of the great industrial concerns, furnish indisputable evidence of their disposition to ignore the principles of ethics, all to the everlasting disgrace of industrialism. And these sentiments which have been adverted to were entertained by many men of high repute and honest instincts. They had inherited wrong ideas from the long past.

This school, following traditions, did not give to employees just consideration. The wage rates were adjusted strictly in accordance with the laws of supply and demand. The welfare of the workmen was decided almost entirely from

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the standpoint of utility and profit, some thought and credit, of course, being given to safety and physical condition as affecting ability to serve.

And what is true of these employers was also true of their employees generally, whose attitude towards their employers and fellow employees was, in a large measure, controlled by ideas that were entirely selfish and in many cases arbitrary, unreasonable and cruel.

These conditions also resulted in great hardship to the general purchasing and consuming public for, in the long run, costs of production, transportation and delivery were necessarily made larger and, as they always must be, were carried on to the ones whose necessities compelled purchase and use.

The picture presented is not intended to be exaggerated; nor is it limited in its application to industrial or other private corporations. Much of it refers, in varying degrees, to private enterprise and to individuals. It embraces and extends to all lines of commerce and finance, to the arts and sciences, to the professionals and to all educators, even to legislators, in fact to every branch of human effort with which business is associated. But it does not relate to the courts; they compose the one division of society which it must be conceded has rarely, if ever, within our time been reproached for disregard of moral principle.

In every-day life may still be seen evidences of indifference to principle, some involving great moral turpitude. The collector of taxes, of revenues, and others, could bear witness. Those who are imposed upon by profiteers in the sale of the necessities of life and confort, by demands for extortionate wage rates or for professional or expert services, may justly complain that ethical reasons are ignored in business conduct.

And the disregard of ethics by great nations has been especially noticeable during the few years last past. The treatment of international compacts and established forms and modes of procedure as mere "scraps of paper" or as inapplicable to exigencies, the unnecessary, brutal and in-

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human destruction of life and property by military forces, temporarily victorious, the needless delay in promptly fulfilling agreements to compensate, in short, the apparent indifference to laws; all these furnish the most striking evidence of a deliberate intention to violate moral principle.

It should not excite a feeling of surprise that many well-intentioned, fair-minded men and women are incredulous when they read or hear of a claim that business, large or small, involves the question of ethics. Business itself and business managers generally have been blamable for the opinions which have been formed. This is said without attempting at this time to discriminate between charlatans who pose as guardians of the public welfare and others who are sincere.

Let us all freely admit we have not always been without fault in the conduct of our business affairs. However, in doing so, we are not called upon to admit the honesty or the purity of motives of some who may have unjustly criticized us. Recently misstatements of a vituperative character have been made publicly in this city concerning a prominent industrial concern and its managers which were absolutely untrue and without foundation in fact. But we must not allow ourselves to become hardened or impervious to deserved criticism by these unwarranted attacks. Every one must answer to his or her own conscience. Each one should profit by proper censure and correct any unethical practice if and when ascertained.

In this connection it is imperative to emphasize the fact that the delinquencies in business conduct which have been mentioned are not intended to refer to the great majority of business men and women. Misconduct by a few injuriously affects the reputation of large numbers of others, and for this reason professional men, lawyers, doctors and even clergymen, have been assailed as dishonest and unworthy, sometimes without discrimination, by the thoughtless or incompetent. The same is true of industrialists and all others regardless of their avocations.

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And it may be asserted with absolute confidence that within the last twenty years or more there has been a decided change in the standards and conduct of business. To my personal knowledge many of the most intelligent managers of business affairs, some very large and others smaller, who have laid down the cares and difficulties of this life, before their final departure completely changed their opinions and reversed their methods concerning ethical questions. This applies also to many who are still living. Hundreds upon hundreds, yes thousands upon thousands of business men, all over this country, who twenty years ago believed that the subject of ethics had little if any rightful place in business conduct, now assert and insist that it is essential and controlling. A man of high intelligence and probity about ten years since, while testifying in court, alluding to a certain other man who occupied the highest position in a large business concern, said: "He introduced new rules into the business game." I think it properly may be claimed multitudes of leading business men during the last two decades have voluntarily devoted more and more time and energy in a conscientious desire to conduct their business in accordance with the rules of propriety and honesty.

Business throughout the United States is to-day transacted on a higher plane than ever before, though of course there is always need for further improvement. The world is surely growing better. If time permitted, many striking instances could be given.

The large majority of business men now conduct their affairs in accordance with the avowed belief that right is superior to might; that morality is on a par with legality and that the observance of both is essential to worthy achievement; that the rights of customers must always be respected; that employees are associates rather than servants and should be treated accordingly; that stockholders of corporations, as well as all partners, are entitled to any information immediately upon receipt of the same by any officer or partner, so that under no circumstances can there be pref-

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erential rights or opportunities; that destructive competition must give way to humane competition; and that full and prompt publicity of all facts involving the public weal is demanded.

A few reasons for this radical change may be mentioned for the benefit of all who are present on this occasion. It will do no harm and should be of real benefit to all of us.

And first of all, reference is made to Theodore Roosevelt, who was a true reformer and, when President, had a marked influence as such. I made the same statement in public more than once during the time he occupied that exalted position. Although at first he seemed to be somewhat extreme as to certain questions, his views were modified during his incumbency. I will relate to you an actual occurrence during the early part of his administration. Pursuant to a common practice by him, he called into conference a business acquaintance and submitted for perusal the draft of a proposed message to Congress. Among other things there was contained a statement, in substance, that it was well understood the majority of business was dishonestly conducted. The visitor suggested this assertion was unjust to the business men and to the President himself, for it was not true; that coming from him it might seriously injure business conditions. The President insisted he was accurate in expression and that he could not change it. Thereupon the business man, reiterating his previous opinion, bade the President a respectful and friendly good-bye. The wording of the message was not then changed, but before it was transmitted the sentence objected to was eliminated. This episode illustrates the fairness and conscientious caution of Roosevelt and is one of the reasons for his great influence for lasting benefit to business management. He was a great and good man.

Not long after the event described, at a meeting of prominent industrialists, a man of ability and wealth bitterly assailed Roosevelt as inimical to industry and general prosperity. The answer was made, by the business man hereto-

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fore referred to, that the President had materially improved business methods. The one who criticized the President, with considerable show of vexation, requested the name of a single individual whose management had been bettered by Roosevelt, and the other said: "I give you my name" and then related the facts pertaining to the proposed message to Congress alluded to. The meeting was composed of about nine men of more than ordinary ability and influence, a majority of whom at least entertained a feeling of distrust and resentment toward Roosevelt. Not one present made any comment, except as already related, with reference to Roosevelt's attitude toward business. Nearly if not every one who had previously opposed, subsequently changed his opinion of the President's administration.

President Roosevelt had many disciples and with assistance from them he created a strong public opinion in favor of honest business management. This sentiment, however brought about, has had much to do with the change, in the minds of the people generally, as to the desirability and value of closely associating ethics with business.

Public opinion has aroused and will always arouse the consciences of men and women. We cannot sleep or eat well, and we cannot for long enjoy life in the face of opposing will of the majority, and this is true of most persons, including the vicious and depraved. We dread the condemnation of the general public, especially if there is reason for it.

We object to fulsome praise, even from our best friends, but we shrink and suffer from deserved adverse criticism. This natural instinct in the hearts of well-intentioned men and women has had a decided influence in reforming business methods. But it may be added with propriety that many self-appointed and self-styled reformers, who never took any interest or action in regard to business or its reformation until long after it was voluntarily reforming itself, have been conspicuous in claiming credit. They represented hypocrisy in masquerade. They were Pharisees offering prayer on the public streets.

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There is another convincing reason for the noticeable changes resulting from the adoption of ethics in business. While the motives are not equally worthy with others, they are very practical and influential with many who would not otherwise be converted. Ethical management brings additional profits to business. Sooner or later it pays in dollars and cents. Any man or concern that firmly establishes a reputation for honesty and fair dealing which is not questioned has a business asset of great pecuniary value and profit.

In the United States the door of opportunity for progress and prosperity is open to all; but to reap the full advantage one must be actuated by the principles of morality. The standards of ethics as described are not offered as a substitute for Christianity, though possibly as applied to business they are not far apart. No one can successfully claim that ethical management in business will combat religious conduct or that the latter will be obnoxious to the former. The teachings of Confucius, who advocated the Golden Rule many centuries ago, if adopted, will secure good results in business, and will be of pecuniary benefit.

Conscientious treatment of employees which secures their respect and confidence will tend to increase their loyalty and efficiency. Provision for their comfort and happiness results in steady and painstaking effort, incites them to take a personal interest in their work, and gives them assurance that their future faithfulness will be appreciated and rewarded. In every particular a contented workman is far superior to one who is dissatisfied and disgruntled.

One corporation alone during the last ten years has appropriated nearly one hundred million dollars for welfare work in behalf of employees. This included the establishment of churches, schools, homes with gardens, recreation grounds and buildings, hospitals, medicinal and dental departments, sanitary and hygiene facilities, safety devices, accident relief, old age pensions and many other projects for the promotion of health and happiness. These expenditures have been profitable.

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If by honesty and fair treatment we satisfy our patrons they will show it in all their dealings. They will be less disposed to be hypercritical. They will see and act on the basis of the rights of both. They will be reasonable in all their transactions with us and insist upon only what is practical and proper under all existing conditions and circumstances; and if the producer, or one who renders service, professional or otherwise, is assailed by outsiders his patrons will champion his rights. This is of much value in times of stress or of unjust criticism.

From considerable experience I assert with confidence and emphasis that, taken as a whole, year after year, the pecuniary gains of a large or small business will be greater if it is fairly, humanely and honestly conducted. If this be true it alone furnishes a logic to every one which should be conclusive.

The approval of the general public up to the limit of propriety is of especial advantage to the business man in every phase of his operations. It is an influence which is realized more clearly than words can specify.

But perhaps best of all, if the business man's conduct is sincerely believed by himself to be honest and proper, he will have the courage and strength to stand solid and immovable against any unworthy attack by the unscrupulous concerning his management. In times of dissensions, coming from any source, such a man can be courageous and patient while waiting for development of all the facts and the rendition of a fair and proper conclusion by all concerned. A clear conscience is a strong weapon of defense in times of ruthless assault, which is liable to be made upon any individual or enterprise. Only those who have passed through an emergency of this kind can fully appreciate this fact. Lincoln could never have lived with serenity through the poisonous and malicious attacks upon his character and his administration except for the knowledge that he had not consciously trespassed upon the limits of moral principle. He knew that sooner or later his motives and his conduct would be fairly judged by an impartial people. Before he was

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cruelly and wickedly assassinated he was almost universally acclaimed as "honest old Abe" and this alone made life worth living and gave him strength to carry a burden which otherwise would have been too heavy to bear.

The late international conference in Washington was largely economical. Its primary purpose was to reduce expenditures of money for national protection and administration. The financial obligations of nations had grown by leaps and bounds until they were colossal and dangerous, and bankruptcy was imminent in many cases. Something radical and comprehensive was demanded. But this great international convention was called and conducted strictly on the basis of business ethics, and, for this reason only, it was successful. It would have proved to be a disaster if the selfish, greedy or unconscionable claims which crept into the deliberations from time to time had found lodgment. Fortunately for the whole universe there were men engaged in the work submitted who possessed the talent and the conscience to raise and to uphold a standard of morality which controlled the final action of the conference on all questions presented. Perhaps in the international convocations of all time, called to deliberate upon economic questions, this was the first one in which moral principles were gloriously triumphant. All honor to the great men who brought about and exercised a controlling influence over this tribunal. Its power for good will be permanent and far greater than we can now fully appraise.

Here was witnessed a world-renowned example of ethics in business; of its desirability and of its value. The intelligent business men of this country and others, those who will best succeed, will be inspired by the so-called Disarmament Conference to apply to business more conscience and higher morals. They will do their part and we shall see a speedy return of the world's business to its normal equilibrium. The repaired and refortified structure of civilization will stand on foundations that shall be solid and permanent against the assaults of wicked men or nations.

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As a passing suggestion it may be observed that henceforth the political party which pays the most attention to ethics is likely to secure endorsement by the majority of voters, including especially the women.

In this greatest of all countries, rich in everything that is good and of real worth, we may be hopeful of the future. Beyond the horizon of our temporarily somewhat beclouded vision, the skies of temporal and moral prosperity are clear and bright. Let us be thankful that, under the power and rule and influence of incompetent or vicious men during the last few years, the world has not suffered more and that at present, in the United States at least, conditions and prospects are good. Let us consider distrustfully those who look darkly through glasses of their own construction, for we know they reflect simply the peculiarities of misinformed or misguided minds.

The alumni of the great universities, whatever may be the extent of their business control or connections, have great opportunity to assist in moulding, by practice and precept, the new and improved structure of enlightenment which is needed throughout the world. Let us engrave our names as co-builders upon the foundation blocks of intellectual and moral granite.

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REPORT OF THE TREASURER 1921–1922.

Balance on hand at date of last annual meeting:		
Liberty Bonds,	$1,000.00	
Cash,	734.77	
		$1,734.77
Received for dues, 1920–21,	$30.00	
Received for dues, 1921–22 (284 memberships),	852.00	
Received for Bar Association reports,	43.00	
Received for half-tone plates used in connection with the annual report,	18.00	
Received interest on Liberty Bonds,	42.50	
		985.50
which added to cash on hand at beginning of year and Liberty Bonds makes total receipts of		$2,720.27
This amount is accounted for as follows:		
Paid for:		
Incidentals at Bar Meeting,	$42.11	
Printing Proceedings,	451.50	
Half-tones, printing cards, etc.,	88.74	
Multigraphing,	8.34	
Stenographic services,	2.75	
Clerical work,	2.00	
Postage,	43.71	
Telephone tolls,	1.25	
Membership book,	5.00	
Flowers (deceased members),	37.78	
Safe Deposit Box,	2.00	
		685.18
Cash on hand,		$2,035.09

Above balance is made up of $335.09 in cash, and Liberty Bonds $1,000 and $700 in Savings Bank.

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Bowker, Edgar M. ..... Whitefield
Branch, Frederick W. ..... Manchester
Branch, Randolph W. ..... Manchester
Branch, Oliver W. ..... Manchester
Brennan, Earl ..... Florence, Italy
Brennan, James F. ..... Peterboro
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Broderick, James A. ..... Manchester
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Brown, Harry J. ..... Concord
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Buxton, Willis G. ..... Penacook

Cain, Orville E. ..... Keene
Carr, Clarence E. ..... Andover
Cavanaugh, John B. ..... Manchester
Chase, Arthur H. ..... Concord
Chase, Ira A. ..... Bristol
Cheney, Thomas P. ..... Laconia
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Clark, Reed P. ..... Londonderry
Cleaveland, Fred C. ..... Lancaster
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Colby, Willoughby A. ..... Concord
Cooper, Burt R. ..... Rochester
Connor, Aloysius J. ..... Manchester
Corning, Charles R. ..... Concord
Costakis, Nicholas J. ..... Manchester
Cottle, Marion Weston ..... North Conway
Couch, Benjamin W. ..... Concord
Coulombe, Ovide J. ..... Berlin
Cox, George B. ..... Laconia
Cutter, Guy H. ..... Concord

Dale, Charles M. ..... Portsmouth
Daley, Daniel J. ..... Berlin
Davison, Harold K. ..... Woodsville
Demond, Fred C. ..... Concord
Devine, Maurice F. ..... Manchester
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Donovan, Joseph C. ..... Concord
Dow, Dexter D. ..... Woodsville

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Doyle, Jeremiah J. ..... Nashua
Doyle, Paul J. ..... Nashua
Doyle, Robert J. ..... Nashua
Drew, Asa W. ..... Ashland
Dudley, David F. ..... Concord

Eaton, Ivory C. ..... Nashua
Emery, Justin A. ..... Rochester
Evans, Alfred R. ..... Gorham

Faulkner, Philip H. ..... Keene
Felker, Samuel D. ..... Rochester
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Flint, Walter M. ..... Plymouth
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Fowler, Frederick W. ..... Laconia
French, George B. ..... Nashua
French, George M. ..... Nashua
Frost, Clark B. ..... Lisbon
Fuller, Arthur O. ..... Exeter

George, Irving T. ..... Newmarket
Grady, Frederick J. ..... Derry
Greeley, Harry P. ..... Nashua
Greene, Arthur A. ..... North Conway
Gunnison, William T. ..... Rochester
Guptill, Ernest L. ..... Portsmouth

Hale, Fletcher ..... Laconia
Hall, Arthur W. ..... Dover
Hall, Dwight ..... Dover
Hall, L. Wallace ..... Salem
Hallinan, Stephen L. ..... Nashua
Haselton, George I. ..... Manchester
Hastings, Moses A. ..... Lancaster
*Hatch, Albert R. ..... Portsmouth
Healy, Arthur S. ..... Manchester

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Hening, Crawford D. . . . . Lancaster
*Hersey, Charles H. . . . . Keene
Hibbard, Charles B. . . . . Laconia
Hinkley, Irving A. . . . . Lancaster
Hobbs, Irving J. . . . . North Conway
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Hollis, Allen . . . . . Concord
Hosford, Charles H. . . . . Woodsville
Howe, DeWitt C. . . . . Manchester
Hughes, George T. . . . . Dover
Hunt, Nathan P. . . . . Manchester
Hurd, Henry N. . . . . Claremont

Jackson, Robert . . . . . Concord
Jacobs, Bernard . . . . . Lancaster
James, Warren W. . . . . Berlin
Jewett, Stephen S. . . . . Laconia
Jewett, Theo S. . . . . Laconia
Johnson, Thomas F. . . . . Colebrook
Johnston, Francis W. . . . . Claremont
Jones, Fred A. . . . . Lebanon
Jordan, Chester B. . . . . Keene

Kauffman, Abraham . . . . . Concord
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Kenison, Arthur E. . . . . Ossipee
Kent, Henry P. . . . . Lancaster
King, Peter J. . . . . Concord
Kivel, John . . . . . Dover
*Knight, Charles H. . . . . Exeter
Knowlton, Donald . . . . . Concord

Lachance, Joseph E. . . . . Manchester
Laing, Robert C. . . . . Manchester
Lake, Harry F. . . . . Concord

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Lane, Edward A. . . . . Pittsfield
Leach, Edward G. . . . . Franklin
Leach, Eugene W. . . . . Franklin
Leavitt, Charles J. . . . . Effingham
Leonard, Thomas J. . . . . Nashua
Lessard, Wilfrid J. . . . . Manchester
Levensaler, A. W. . . . . Concord
Libby, Jesse F. . . . . Gorham
Little, Cyrus H. . . . . Manchester
Livingston, Frank C. . . . . Manchester
Lord, Harry T. . . . . Manchester
Luce, Thomas D. . . . . Nashua
Lucier, Alvin A. . . . . Nashua
Lucier, Alvin J. . . . . Nashua
Lyford, James O. . . . . Concord

Madden, Charles A. . . . . Keene
Madigan, Jr., Thomas H. . . . . Washington, D. C.
Manning, Robert L. . . . . Manchester
Marble, Thomas L. . . . . Berlin
Marsh, Ralph S. . . . . Conway
Martin, Nathaniel E. . . . . Concord
Marvin, William E. . . . . Portsmouth
Matthews, Joseph S. . . . . Concord
Maxson, Louis A. . . . . Claremont
McCrillis, John . . . . . Newport
McLane, John R. . . . . Manchester
McLaughlin, A. Winifred . . . . . New York
Moore, Hugh . . . . . Lebanon
Moore, Joseph . . . . . Lebanon
Moran, Thomas F. . . . . Nashua
Moreau, Oscar F. . . . . Manchester
Morrill, Arthur P. . . . . Concord
Morris, George F. . . . . Lancaster
Morris, James H. . . . . Concord
Murchie, Alexander . . . . . Concord

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Murchie, Robert C. . . . . Concord
Murphy, Patrick W. . . . . Dover

Newhall, J. Blanche . . . . . Concord
Normandin, Fortunat E. . . . . Laconia
Noyes, Harry G. . . . . Gorham

Oakes, Eri C. . . . . Lancaster
O'Neill, John. . . . . Manchester
Osgood, Anson G. . . . . Manchester
Osgood, Clinton S. . . . . Manchester
Owen, Stanton . . . . . Laconia

Page, Elwin L. . . . . Concord
Parker, Samuel S. . . . . Farmington
Parsons, Frank N. . . . . Franklin
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Pickard, Roy M. . . . . Keene
Pierce, Kirk D. . . . . Hillsborough
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Piper, Jonathan . . . . . Concord
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Plummer, William A. . . . . Laconia
Prescott, Benjamin F. . . . . Milford
Rainie, Herbert W. . . . . Concord
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Saidel, Myer ..... Manchester
Sawyer, William H. ..... Concord
Scammon, John ..... Exeter
Sewall, Arthur E. ..... Portsmouth
Shackford, Samuel B. ..... Dover
Shea, Frank T. ..... Concord
Shurtleff, Merrill ..... Lancaster
Shute, Henry A. ..... Exeter
Shute, Richard E. ..... Exeter
Sleeper, William H. ..... Exeter
Sloane, Scott ..... Lebanon
Smart, Elmer J. ..... Rochester
Smart, Guy ..... Rochester
Smart, Wilfred H. ..... Boston, Mass.
Smith, Ralph G. ..... Hillsboro
Smith, Raymond U. ..... Woodsville
Snow, Conrad E. ..... Rochester
Snow, Leslie P. ..... Rochester
Spaulding, Harry W. ..... Manchester
Spring, John R. ..... Nashua
Stanley, John W. ..... Concord
Starr, William J. ..... Manchester
Stevens, Henry W. ..... Concord
Stevens, William L. ..... Concord
*Streeter, Frank S. ..... Concord
Sullivan, Edmund ..... Berlin
Sullivan, Patrick H. ..... Manchester
Sulloway, Frank J. ..... Concord

Templeton, Ernest G. ..... Exeter
Terrien, Albert ..... Nashua
Thayer, Ira W. ..... Berlin
Thayer, William W. ..... Concord
Theriault, Marcel ..... Nashua

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Trapp, Harry E. . . . . Laconia
Tuttle, James P. . . . . Manchester

Upton, Robert W. . . . . Concord

Vancore, Dixon F. . . . . Tilton
Veazey, William D. . . . . Laconia

Wagner, George A. . . . . Manchester
Waldron, Jere R. . . . . Portsmouth
Wallace, James B. . . . . Canaan Street
Warren, George H. . . . . Manchester
Warren, John D. . . . . Nashua
Wells, Christopher H. . . . . Somersworth
Wentworth, Alvin F. . . . . Plymouth
White, Albert H. . . . . Manchester
White, W. Leroy . . . . . South Tamworth
Whitford, George L. . . . . Washington, D. C.
Whittemore, Arthur G. . . . . Dover
Wiggin, Arthur H. . . . . Farmington
Wilson, Allan M. . . . . Manchester
Woodbury, Chester T. . . . . Salem
Woodbury, Frank E. . . . . Franklin
Woodbury, Gordon . . . . . Manchester
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Woodworth, Edward K. . . . . Concord
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PUBLICATIONS

OF THE

Bar Association of the State of New Hampshire

NEW SERIES, VOLUME FIVE . . . . . PART ONE
(OLD SERIES . . . . . VOLUME TEN)

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JAMES W. REMICK

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PRESIDENT'S ADDRESS.

The customary address by the President of the Association does not appear in this volume because the illness of the President, James W. Remick, made it impossible for him to attend the Annual Meeting or prepare an address for the occasion. In his absence, Judge Robert J. Peaslee, then Vice-President and now President of the Association, presided most gracefully both at the afternoon meeting and at the banquet in the evening, but delivered no address for publication.

It is due to Judge Remick to say that, before he was taken ill, he had secured Senator Beveridge to deliver the Annual Address and had given much time and attention to perfecting the details of what proved to be one of the most successful and enjoyable meetings in the history of the Association and that, throughout his administration, he labored with zeal to promote the general welfare of the Association. To his brothers, who know so well his felicity in public address, it will be a source of regret that some characteristic message from him does not accompany his portrait in place of this mere note of explanation and appreciation.

JONATHAN PIPER,
Secretary.

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ANNUAL ADDRESS.

THE DEVELOPMENT OF THE UNITED STATES CONSTITUTION UNDER JOHN MARSHALL.

BY HON. ALBERT J. BEVERIDGE OF INDIANA.

Mr. President, Ladies and Gentlemen:

I am particularly obliged to your President that he specifically designated by name the man about whose life and career I attempted to write, because my experience has been that there is some contention on that subject.

This is illustrated by a letter I received which I think I can repeat to you word for word. After it was reported in the newspapers at Indianapolis and elsewhere that I was actually engaged in writing the life of John Marshall, I received the following letter from one of the dearest friends I ever had, or ever expect to have. I should explain that he is, and was, an old line Republican, of the regular kind, who did not concede that any person, even so noble and splendid a man as our former Vice-President, who bore the name of a Democrat, could be either sensible or sound. Very much of the type of my mother, who, although there were Democrats in her church she was satisfied would go to heaven, nevertheless had her eye on them.

So when it was reported that I had begun the life of Marshall I had this letter from him. He is a banker, whose particular aversion at that time was my dead friend and leader—not dead to me; ever alive—Theodore Roosevelt. He got over that as everybody else did, but that is the way he felt at the time. The letter said:

"*Dear Albert:* I have just been at the Club luncheon, and I heard something about you that I must write you about. You know how it hurt me when you were in the Senate, and especially with your own accord; and when we had Roosevelt; when he was President; and I did not

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say anything to you about it. You know it broke my heart when you went with him out of the party. I forgave you even that, but at the Club the boys told me that you were writing the life of Tom Marshall, and that is too damn much."

I find also that there is some inaccurate understanding that it is a mere pastime to write biographies, because during the last campaign, when I came back from the coast to Indianapolis, I left my secretary, who is now the sales-manager for the Prest-O-Lite, and had been contributed to me by that institution, at Indianapolis, to pick up what he could and tell me about it, while I went to Louisville to close the campaign.

When I came back he came into the room and smilingly said, "I have something funny to tell you." I said, "Let's hear it." "I met so and so down the street" (naming one of my dearest friends), "and he said to me, 'Well, William, what are you doing here?' 'I am with Senator Beveridge as secretary.' He said, 'I thought you were salesmanager of the Prest-O-Lite.' I said, 'I am.' 'Dear me, I am glad to see Albert is back on earth again. Tell me what he has been doing the last eight years.'" My secretary said, "He has been writing a book." "A book!" "Oh, yes," said my secretary,—"the life of Chief Justice Marshall, in four volumes." My friend said, "Oh, I believe I did hear about that, but what has he been doing?"

Before I begin the serious discussion of the afternoon I want to lay the blame for what you will be inflicted with where it belongs. When I was asked to come here I gladly consented, but I warned your secretary in advance that my remarks would be extemporaneous, and since, necessarily, I must cover much ground when discussing even in a surface manner the development of the American Constitution under John Marshall, that they would be rather long. I told him that in New York and Denver there was still a discussion whether my speech was three hours and fifteen minutes, or three hours and sixteen minutes in length; so you will know that if it is somewhat prolix I had it understood

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in the beginning. Personally, I do not like to extemporize; I do not like to hear an extemporaneous address; and I do not like to make one.

My observation has been that an extemporaneous speaker is like the description which the great statesman, William M. Evarts, gave of his sentences, which were successions of literary gems, occupying a page and a half each. One day he was arguing a great railroad case in the Supreme Court of the United States. He got tangled up in one of his interminable sentences, and said, "Your honors will perceive that my sentences are like this railroad—they lack terminal facilities."

But at least you will be saved from the fate of Dooley on his visit to the Senate, when I first addressed that august body. Describing this event to Hennessy, Dooley said: "And then finally up rose young Senator Beveridge and proceeded to deliver a few hundred thousand carefully prepared extemporaneous remarks." So to forestall any uneasiness on your part, I will take out my watch and lay it before me.

My subject is "The Development of the American Constitution Under John Marshall." At the time when Marshall was appointed Chief Justice of the United States Supreme Court by sheer accident or, as I prefer to believe, by the interposition of Providence—at that time the Supreme Court amounted to nothing. It had not then become what it now is, the greatest organization for the preservation of liberty and the administration of justice the world has ever seen, or the mind of man has ever created. From the very first, until John Marshall began to develop its powers, it was weak, inefficient, and not respected. You will recall that Washington himself had great difficulty in finding anybody to be his first Chief Justice.

John Jay, one of the most accomplished lawyers in the country, finally accepted, largely to please him, as a matter of patriotism. When he resigned as Chief Justice of the Supreme Court he became governor of New York. Presi-

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dent Adams, after the resignation of Ellsworth, offered the position to John Jay again, and John Jay declined in a very powerful letter to the President, supplemented by one to his wife, in which he said that the court was so weak and ineffective that it could not perform its functions under our scheme of government, and therefore, in substance, that he could not waste his time upon it. So little was thought of a place upon the Supreme Court that John Randolph of South Carolina resigned in order to take the position of Chief Justice of South Carolina.

In fact, in those early days, hardly anything of a national character was regarded as of any consequence. Senator Brown of New York resigned from the United States Senate in order to become postmaster of New York, then a very infant metropolis. Jefferson as early as 1785 declared in a letter that undoubtedly the second office in the United States, in dignity and importance, was that of governor of Orleans Territory.

To bring it dramatically before your eyes, because I perceive there are some here who are not perhaps read in the law, to bring dramatically before you the position and dignity of the Supreme Court of the United States at the time John Marshall went upon the bench, perhaps this instance will serve better than any other.

When the great architect of our national capitol designed it to be then, which it still is, the finest piece of governmental architecture the world has ever known, when it came to providing space for the Supreme Court of the United States, he actually forgot that there was such a thing, and provided no room for it; and that is why it was that the Supreme Court of the United States during all the time that Marshall was Chief Justice met in a room in the basement of the building. The present Supreme Court room was at that time the room of the Senate of the United States. In that little semicircular room Webster replied to Hayne, and all those immortal debates took place. The Supreme Court then met in what is now the anteroom of the Supreme Court.

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Marshall accepted a place at the head of the Court with very great misgivings and reluctance. After President Adams had exhausted all possibilities of some one else filling it, he turned to Marshall, then his Secretary of State, because Marshall had always done what he wanted him to do. Marshall had a way of putting his own ideas in another man's head and making the other man think he did it himself. Marshall took two or three weeks before he decided to accept, and finally did so as a matter of sheer patriotism and self-sacrifice; quite as much so as when he became an officer under Washington in our War for Independence. In all the country there were then only two men who saw the latent possibilities of this tribunal. These two were John Marshall and his great relative and subsequent antagonist, Thomas Jefferson. And I might say in passing, since it may be of some interest as it is of historical importance, that one of the many causes of Mr. Jefferson's bitter and almost discourteous animosity toward Marshall was the fact that Jefferson had expected, and perhaps had the right to expect, that he would appoint the next Chief Justice of the United States after Ellsworth; and he was firmly convinced that Ellsworth deliberately resigned in time for Adams to appoint the successor. If Ellsworth had not resigned and Jefferson had appointed the Chief Justice of the United States, we know whom he would have appointed. It would have been Spencer Roane, President of the Court of Appeals of Virginia, as able a man as the country held, and infinitely more learned than Marshall; and if that had been done the whole course of our history would have been the reverse of what it has been. Every one of the great cases that made our Constitution and our republic what it is to-day would have been decided the reverse of what they were. These cases were *Marbury* v. *Madison*, *Fletcher* v. *Peck*, *McCullough* v. *Maryland*, *Cohen* v. *Virginia* and *Gibons* v. *Ogden*. We have this knowledge from the writings of Roane himself. Marshall, accepting this place, developed the Supreme Court. In order to make for our scheme of government one great arm

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that should be above the influence of an administration, above Congress, above the fleeting emotions of the people themselves; to maintain the Constitution and uphold our free government, no matter what the consequence might be; that was the motive with which he accepted this place.

Then he went upon the bench with a clearly defined purpose, and a profound philosophy, which to him was the passion of his life.

As soon as he became Chief Justice, he began to strengthen the court, and he did it by an act of audacity. Now, I might say here, that every one of these immortal opinions upon which rest his enduring fame were acts of audacity; acts of audacity as startling and as bold as those of Napoleon in military affairs on the battle field. I sometimes think that greatness is inseparable with what ordinary men call audacity. I think we shall see this in Marshall as we go along.

The first thing he did to strengthen the Supreme Court was to read, himself, all the opinions of that body. Before that time they had been read *seriatim* as they are now, one justice after the other. The Chief Justice assumed the power, and he exercised it by delivering all the opinions himself, except those in which he took no part. And thus throughout the bar, and to the country, he began to give out the impression of the unity of the Supreme Court; that there was a body that spoke with a single voice. And so a psychological change in the popular opinion of the supreme tribunal of the nation began, and it began by that dramatic, and I say, audacious act of authority.

Then came those wonderful opinions that made our fundamental law the great ordinance of our national life, whose blessings enrich our lives to-day; and without which opinions this nation would not have endured.

I intend this afternoon to touch upon merely two of these, because each of them is entitled to separate discussion; and I give these two merely as an illustration of the growth of the American Constitution, and how it came about.

Let me say at this particular point—and I say this to you

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lawyers, and even judges, as well as to the ladies and gentlemen here who are not instructed in the law—that you must remember that of these elementary opinions, every one of them was a state paper. Not one of them was merely a judicial utterance. Not one of them grew out of the case immediately before the court. But instead they grew out of profound economic, social and political conditions as wide in extent as the entire nation. I might go further, even, and say that in some of the greatest of these opinions, the two that I shall mention, and in addition *Cohens* v. *Virginia*, and one or two others, the cases themselves before the court were merely occasions for the handing down of these tables of the law to the American people. Two or three of the most important of them were feigned cases. They were not genuine litigation.

Now bear carefully in mind, that all of these great opinions, instead of being addressed to the parties before the court, were addressed to the whole nation; that instead of growing out of the immediate questions before the court they grew out of profound, social, economic and political conditions; and that instead of being merely judicial utterances they were state papers of the first rank; state papers in the sense that the Declaration of Independence, and Hamilton's First Report on the Public Credit, and Jefferson on the Freedom of the Seas, and Washington's Farewell Address, and Lincoln's Second Inaugural, were state papers. Unless that is firmly fixed in your mind you lose not only the legal meaning of these great opinions, but all the philosophy behind them, all the color and human understanding that weave them into the wonderful fabric of the republic.

The first case was *Marbury* v. *Madison*. And I know that in order to make this intelligible to those here who are not versed in the law, especially constitutional law, you will permit me to be rather specific as I examine this case and state in the beginning just what *Marbury* v. *Madison* held, just what it did to our country.

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Marshall held in *Marbury* v. *Madison* that when Congress or a state legislature passed an act which a majority of the Supreme Court of the United States thinks violated any provision of our national Constitution, it then is within the power and becomes the duty of the court to declare that the act of the Legislature or of Congress null and void. That case introduced into American constitutional law the doctrine that courts have the power to overthrow legislation. It amounted to an amendment as far as the laws are concerned—a judicial amendment—to the Constitution of the United States. There is nothing in the Constitution on the subject. There is not a word that specifically gives the court that power.

In the Constitutional Convention there was a little debate on the subject, and in that small debate there was a wide difference of opinion. For example, so wise a man, and so great a patriot as Benjamin Franklin, declared that if a majority of both Houses of Congress should pass a law, and the President signed it, no body of men on earth would have the temerity to overthrow it. And I believe that is the consensus of the scholarship of both the radical school and the conservative school alike, both Channing and Baird; that it was the general view of the Constitutional Convention that Congress inherently did have this power.

Now, mark you, this power of the court is distinctly American. You see in the newspapers and magazines, and you hear upon the platform frequently, that our Constitution is substantially like that of other countries. That is untrue. The American fundamental law is utterly and totally unlike that of any other country on earth; particularly the power of the courts over legislation, which is the heart of our constitutional system, which any lawyer will tell you ladies and gentlemen who are not instructed in the law, is the very soul of American jurisprudence; is distinctly and exclusively American. No other courts on earth have that power. And in every other country on earth where

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there is a parliament, that parliament is its own interpreter of the constitution, and is supreme.

The doctrine of judicial power over legislation is exclusively American. It is as Bryce well says, one of America's original contributions to the science of universal jurisprudence. And I will take up much time in discussing it this afternoon, not only because it is essential that everybody not only as lawyers, but as citizens, too, should have a better knowledge of why this was introduced into our system, but also for the very practical reason that within the present ten years—and I fear very soon—you will again see it subjected to one of those terrific assaults that have throughout our history marked its development.

Now, then, how did that case happen to be decided? What were the reasons back of it? Of course you understand that everything has its historical origin. And without a knowledge of the historical roots of a thing you cannot understand its meaning. I cannot agree with the very eminent, able public man who said that history amounts to nothing; that all it amounted to was turning over a new leaf. It does not. Everything has its roots in the past.

How did *Marbury* v. *Madison* happen to come about? How was the profound innovation in our fundamental law, which has made our judiciary the bulwark of liberty and justice? How did it happen? The roots of *Marbury* v. *Madison* are found in the French revolution.

Of course, we Americans are the best people in the world. We are the best educated people and the most righteous, and the ablest in everything else that is fine. We admit it ourselves.

Perhaps, however, we have a few national defects; and if we were asked to name one I think we would all agree upon the curious fact that we Americans are the least informed in our own history of all other people in the world. For example, I suppose ninety-nine out of every one hundred of the so-called well read people to-day really believe

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that France, and by that we mean the French Republic, helped us win our War of Independence.

Now, as a matter of fact, that aid was given us by the French autocrat, Louis XVI, at a time when the French Government was an autocracy far more severe than the overthrown autocracy of the Czar. When it had reached its height of severity it brought about the revolution, and Louis XVI helped us, not because he cared a rap for us, but, as we know from letters of his foreign ministers, because he wanted to injure the traditional enemy of France—Great Britain.

The French Republic was not established until eleven years afterwards. And when it was established we immediately got into a row with it, which grew almost to war. I firmly believe, and I think it can be demonstrated, that but for the wisdom and prudence of John Marshall, the Secretary of State at that time, open war would have formally been declared. Indeed, naval warfare did occur for two years. Allen of Boston has written perhaps one of the most scholarly treatises on the subject. It was at that time that our navy was founded, and Washington took command of the provisional army that was raised to dissuade the aggressions of the French Republic. In order to prevent an open break and a formal declaration of war, President Adams sent a commission to France to patch up the difficulties. And upon this fact rests one of Marshall's claims to enduring fame.

The commission consisted of Pinkney of South Carolina, Gerry of Massachusetts, and John Marshall of Virginia—then without national reputation, but a man who had impressed himself upon every one he met for his clear-headedness, his profound patriotism and the clarity of his intellect. The story of that diplomatic interchange is, beyond all doubt, far and away the most dramatic in our whole diplomatic history to this day. Nothing else touches it.

The whole account of it was written by Marshall. It was not long after they reached Paris that he became the real

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head of the commission. The French diplomat, Talleyrand, who was then, and still is historically, the greatest diplomatic prodigy the world has ever seen, demanded from our envoys the sum of $250,000 in cash before he would consider a discussion. They attempted to force a loan out of the young republic. The envoys were treated to every indignity. It is like a play upon the stage—the whole story.

Then occurred the great intellectual dual between John Marshall, on behalf of the American Commission, and Talleyrand. It was Marshall who read the American memorial and all the rest of those great state papers, and to this day there is not in our archives at Washington a single state power that surpasses—I will go further and say that touches —in clearness of thought, in exaltation of expression, and in supreme eloquence, the papers that Marshall wrote upholding the rights of the American republic. He wrote an account of all these and sent them in dispatches to President Adams. The names of the people, men and women, whom the French Government employed, were represented as X, Y, Z, and the real names were printed in cipher. That is why it is known as the X Y Z affair.

Now fix that firmly in your mind. We are leading you to *Marbury* v. *Madison*. The second fact is this: The reaction produced in England and America by the French revolution was precisely, to the smallest line, the same reaction that is to-day produced in England and America by the Russian revolution. In no respect is it any different, except that perhaps the reaction produced by the French revolution was fiercer in both countries.

I would advise every lawyer who cares anything about the history of his country, and who has misgivings whenever there are great sweeps of popular feelings, to get out of the library to-morrow May's Constitutional History of England, 9th chapter, 2nd volume, to see what was done in England, caused by the reaction of the French revolution,—the efforts to supress free speech, and all that sort of thing. In this country the reaction was still more severe, and per-

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haps those who were alarmed had reason to be. Societies were formed all over the United States on the model of the Jacobin Clubs. They were called democratic societies and advocated the doctrines of the French revolution. One of them in Virginia went so far as to openly advocate abolishing the Constitution of the United States, and putting in its place the French Constitution, which was infinitely more radical than ours. Activities of that kind excited the so-called better classes, the men and women of property, learning,—the conservative classes,—to almost a frenzy of apprehension.

In reading the letters of that time, it is hard to-day to believe that men could have become so excited. The so-called better classes sincerely and profoundly believed that if this thing were allowed to go on, if these men were allowed to proclaim in America the doctrines of the French revolution, it would result not only in the overthrowing of the American Government but in the utter destruction of society itself. And at that time, and for that reason, the party then in control of both Houses of Congress and the presidency, with the greatest party achievements and organization the world has ever seen; the party that gave us our Constitution, if any party can be said to have given us our Constitution; the party that gave us our fundamental policy; the party that gave us our foreign policy, which to this hour has always been followed, and I pray God always will be followed; the party that gave us our concept of nationality; the party of Washington, Hamilton and Adams, and all the great constructive minds; the great Federalist party, from honesty of purpose, and as a matter of sheer patriotism committed a fatal mistake. In order to suppress what it honestly believed to be sedition, and overthrow this destructive tendency, it passed the famous, and, as was then said by the Republicans, infamous Alien and Sedition Laws of 1798.

These laws are very mild in comparison to some the states have passed in the last two or three years. The sedition

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law provided that if any man or woman criticised the government unduly, or the President or any officer, he or she should immediately be indicted, tried and convicted for sedition, and fined $200, or something like that, and imprisoned. And the alien law provided that the President, or the proper executive authorities, could order deported from the country any alien—because the country was then full of aliens proclaiming the radical doctrines of the French revolution—that were believed inimical to the interest of the United States.

The instant that they passed, Mr. Jefferson, who was then building up the Republican party, the radical party which had been almost dissolved by the news of what had happened to our envoys in Paris—Mr. Jefferson, whom, whatever anybody may think of his statesmanship or of his philosophy, all must admit was the greatest practical politician the world has ever seen (Professor Chanest is right when he calls Mr. Jefferson the greatest political strategist of all times)—Mr. Jefferson, that genius of political manipulation, instantly saw the fatal mistake of the Federalists.

When these dispatches of Marshall got back telling what had transpired in France, the President sent them to the Senate, and they were published, and then throughout the country, on every hilltop the fires of patriotism were lighted, cannons thundered, and fifes shrilled. Jefferson's party had almost dissolved. The Federalist party was at that time absolutely supreme. But for that fact American history would have been different. But when, a month later, the alien and sedition laws were passed, Jefferson saw that fatal error and used it as a weapon with which he fatally wounded and ultimately destroyed the Federalist party.

Mr. Jefferson did this in a practical way. He himself chose to write the Kentucky Resolutions and had Mr. Madison write the Virginia Resolutions. You are familiar with those famous Kentucky and Virginia resolutions. But in order to refresh your minds—I am leading up to *Marbury* v. *Madison*—let me say that in substance the Kentucky and

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Virginia resolutions declared that the Constitution of the United States is not what Marshall afterwards said it was, an ordinance of national scope, but that the Constitution of the United States is merely a contract between the general government on the one hand and each state on the other hand; that when the federal government violates that contract it is the power and the duty of any state that is injured by that violation so to declare, and refuse to obey a law of Congress enacting such policy into law.

Of course, that stated the philosophy of secession. From the moment the Virginia and Kentucky resolutions were passed, men who believed that way held to them, and men who believed they were strong held to their views. War was absolutely inevitable. The fire on Sumpter and the surrender at Appomattox were determined by the Kentucky and Virginia resolutions. Kentucky and Virginia sent the resolution to other states. And here is where a little knowledge of history is so dangerous; I say fatal. Until a few years ago all that was known of the response of the states, all you will find in Elliott's debates, is that the New England States, New York, Pennsylvania, New Jersey, Delaware and Maryland answered those resolutions by denying their doctrine, and by declaring that under our Constitution there is only one power that has the authority to say what is and what is not law under the flag, and that power is the judiciary. That is all that we have known until recently.

As a matter of fact what happened was this: In each of those legislatures that answered that resolution was a Federalist majority, and the Republican minority fought for the doctrines of Kentucky and Virginia to the last ditch. For instance, in New York the Federalists numbered 50 in the legislature, and the Republicans 45. And the doctrine of the power of the judiciary over legislation was announced in the replies to Virginia and Kentucky by the Federalist majority of the 50, and over the bitter, violent and ferocious resistance of the 45 Republicans, who insisted that each state has the right to declare when Congress has violated a

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law. The same is true in Massachusetts. At that time, 1798, the Federalist party was the failing party; it was a conservative party, the party of old men. The Republican party was the growing party, the radical party, the party of young men. Within two years, for instance, the Republican party had captured New York, Pennsylvania, New Jersey, Delaware; it all but captured Maryland; and in New England the armaments of federalism were crumbling. There can be no doubt, then, but that two years later most of these states would have returned a different answer to Virginia and Kentucky.

And so the great presidential campaign of 1800 came on,—one of the two or three presidential campaigns that really meant something in our history, one of the two or three that changed the destiny of our republic. In those days they discussed fundamentals, not trivial incidentals. The great issue in that campaign, proclaimed on every stump and printed in every newspaper, was this: What power under our Constitution can overthrow an Act of Congress or state legislature? The Republicans maintained that that power was in the states; the Federalists maintained that that power was in the judiciary. Into that came another question.

As soon as the alien and sedition laws were passed in 1798, the judiciary, again I say, influenced by the highest motives, inspired by undoubted patriotism, immediately began to enforce that law with the most violent, autocratic ruthlessness. Men were indicted—Matthew Lyon in Vermont, Cooper in Pennsylvania, Wenwood in Virginia, and elsewhere—for their criticisms of the administration, indicted, tried and convicted, and put in jail. And in the trial of those cases, the federalist judges, the nationalist judges, every one of whom belonged to the Federalist party, acted not as judges, but as prosecutors and persecutors. They abused the defendants from the bench; they browbeat witnesses; they insulted counsel. The Freys case, William B. Lewis, at that time the very leader of the American Bar, did what every lawyer ought to do,—we should remember that

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lawyers are not only the employes of their clients, but they are defenders of justice, and the courts should so realize. When Justice Jones announced his opinion, Lewis arose, threw his papers on the table, walked down from the room, declining to be a party to the proceedings. So did Hay, down in Virginia. The judges in charging their juries not only took violent sides, but even indicated their personal opinions on the merits of the controversy between England and France. So splendid a lawyer as James Ardell of the Supreme Court, in his charge to the jury in the Freys case, used language so full of livid vituperation, that it is impossible to conceive that a man who was entirely sane, much less a judge, used.

Eventually there began to grow up an unrest which manifested itself in the hearts of the people, as is always the case, silently at first, because nobody dared to think aloud. This feeling grew. New forces were organized, and there gradually grew in the minds of the people a hatred for the judiciary, and especially for the federal judiciary. Mr. Jefferson said, and the people came to believe, that the alien and sedition laws were made to suppress free speech, which is the sacred fundamental of American institutions. And this was also an issue in the campaign of 1800. And so on the two issues, one direct and the other collateral, the Republicans swept the country.

Up to that time the Federalists had been supreme in the House and Senate, but they were almost swept out of existence, by a majority that has not since been equalled, until 1920 by the majority that was given to us Republicans; and Thomas Jefferson became President of the United States.

Now Jefferson's first act had to do with this very question of the power of the courts. In his first message to Congress he announced that the states had the power, but outside of the states, not Congress, but he himself, the President, had the power, to declare whether an Act of Congress was constitutional or not. That message is in the library of Congress in the manuscript division. There is a marginal note

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saying: "This was stricken out by my advisers, because it was thought incapable of being shaken." He said the judiciary had no power over legislation and he ordered—I use the word advisedly—he ordered his party in Congress to repeal the federalist Judiciary Act of 1801. And on the first day of the session John Breckenridge, the Kentucky senator, typifying all the radicalism of the country, an able, bold and fearless man, arose and said: "Mr. President, I move to repeal the Judiciary Act of 1801."

The Judiciary Act is the law under which the courts are organized. The National Judiciary Act is the law under which federal courts are organized. The State Judiciary Act is the law by which your state judges hold office and administer justice. Until 1801, our judiciary act was the Ellsworth Judiciary Act, drawn by Oliver Ellsworth in 1789. Now, the Judiciary Act of 1801 was the Federalist party's last great piece of constructive legislation. It received great praise abroad. It was one of the most effective pieces of legislation that was ever passed.

Nearly all of the Federalist leaders were great and able lawyers. They foresaw with horror the coming election of the Republicans, and they felt it was their duty before they went out of power to pass a sound judiciary act. They did it. It was the act of 1801. And to show you how sound it was, 95 years after the Republicans under Jefferson had repealed it, it was re-enacted as the present federal judiciary act, under which our courts now set.

Now, in passing this act of 1801 the Federalists created sixteen new judges. That again gave Mr. Jefferson his chance. The Republicans charged it cost $150,000 a year, and that the country could not afford it. It also afforded President Adams a rare opportunity to take care of some of his friends, just as we do nowadays when defeated politicians are taken care of by appointments, only we call them "lame ducks." The Republicans, of course, wanted the offices, then, and did not want the Federalists to have them. They moved the repeal of the law.

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Then occurred one of the greatest intellectual battles the world has ever seen in a parliamentary body. The great judiciary debate of 1802 between such Federalists as were left in the Senate and the House, and the overwhelming Republican majority. That debate lasted four months.

No lawyer has a right, an honorable right, to allow anybody to call him a constitutional lawyer, who has not thoroughly mastered that wonderful debate. In brilliancy, eloquence, learning and reason, I have never read its equal. Mark you, Marshall, the new Chief Justice, was there and read every word of that debate, which was fully reported. The question debated by those men for four solid months was the same that had been debated throughout the country since the alien and sedition laws were passed, since the Kentucky and Virginia resolutions had been adopted, and throughout the presidential campaign of 1800. It had now been transferred by that debate to the halls of Congress, and the question they debated for four months was, What power under our Constitution shall be the final, distinctive authority to say what is a valid law throughout this republic?

The Republicans maintained, as they had on the stump, that that was the province of the states, that the judiciary had nothing to do with it, that there was nothing in the Constitution giving that power to the judiciary, that to clothe the judiciary with that power would be to make the judiciary an autocracy, and that an autocracy would be established behind the representatives of justice. The Federalists maintained what has become our doctrine now, that under our Constitution the only power that has the final authority distinctively to say whether a law of Congress or a state legislature shall stand or fall is the judiciary, and in the final analysis the Supreme Court of the United States; that it is above the imputations of politics, above the passions of Congress or a legislature; that it is above everything; and that it stands there as the background of our fundamental law, as well as of liberty and justice. At the end of that debate the law was repealed by a strict party

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vote, every Republican voting for the repeal of the federalist Judiciary Act, and every Federalist voting against it; every Republican voting in favor of the doctrine of secession, the doctrine of state rights; every Federalist voting that the states had no right to determine the constitutionality of a law, that only the courts had that right.

Now, the repeal of the law threw sixteen federal judges out of office, and the Republicans under Mr. Jefferson were utterly confident that those judges would instantly bring a suit to test the constitutionality of that repeal. They were afraid that the Supreme Court under Marshall would declare the repeal unconstitutional, because already in two years it had dawned upon the Republican party and the whole country that at last there was a Chief Justice of the United States who had the mental resourcefulness to give his reasons and who dared to condemn a law as unconstitutional if he thought it was wrong, or to declare it valid if he thought it was right. So Mr. Jefferson and his lieutenants resolved to prevent such a suit being brought. They did it by a simple expedient. They just abolished the Supreme Court of the United States for fourteen months. That was all. It was perfectly legal, as it was within the power of Congress to declare when the Supreme Court of the United States should meet; and they just changed the time of meeting and the Supreme Court of the United States did not exist for fourteen months. They figured that the fellows who were put out of office, by that time would have quieted down and begun to practice law, and the judiciary would be carried on under the old law and there would not be a suit brought. And they were right; and we do it just that way even down to the present time.

The last thing that President Adams, before going out of office, did was to appoint forty-two justices of the peace for the District of Columbia. He nominated them and sent the nominations to the Senate on the afternoon of March 30th. The federalist Senate confirmed them, sent them back to the President, who signed the commissions and

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sent them to John Marshall, the Secretary of State. He at that time was both Chief Justice and Secretary of State. So as Secretary of State he attached his signature and the official seal of the United States. There was no clerk around, and he supposed, of course, that they would be delivered in the morning, and he left them on the desk. Marshall did that with the negligence which characterized him, and which I will describe to you at the banquet to-night, because I know he was about the most careless man who ever lived about little affairs.

The next morning Jefferson was inaugurated and Marshall was succeeded as Secretary of State by James Madison. Jefferson said in a moment of economy that forty-two justices of the peace for the District of Columbia were too many and that twenty-five were enough. And he was right about it. Madison made it twenty-five, and this meant that seventeen commissions were not effective and were not delivered. Madison obeyed orders. And of the seventeen men whose commissions for justice of the peace were not delivered to them, four of them, William Marbury, Dennis Ramsay, Robert Townsend Hooe, and William Harper, brought an original suit in the Supreme Court of the United States asking the Supreme Court of the United States for a mandamus—for an order from the Court to the Secretary of State to compel him to deliver those commissions.

That is the great case of *Marbury* v. *Madison*. It involved the office of Justice of the Peace. It amounted to nothing. To show you how insignificant it was, four of the men to whom the commissions were delivered declined to receive them and wanted to resign. There the case stood, and then, before it could be passed upon, the Republicans stopped the Supreme Court for fourteen months. So it was on the historic day of February 19, 1803, when the Supreme Court of the United States assembled, all these things had transpired; and there they found on the docket this little and insignificant case of *Marbury* v. *Madison*.

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It involved nothing but the delivery of commissions to four justices of the peace.

I am absolutely certain that by that time no person cared one whit about it. I feel sure that the applicants themselves were not before the court. Mr. Jefferson was perfectly right in his letter to Mrs. Adams, about ten years later, in which he said that *Marbury* v. *Madison*, when it was decided, amounted to nothing more than a moot case. What could Marshall do with that case? Obviously he could do what had been done many times. He could continue it on the docket. He did that many times himself. Take the great Manville Estate case, involving hundreds of thousands of dollars; it was continued year after year without an application from either party.

Now we begin to see the prophet and seer. There are two things he could do, apparently, and one of those things he was expected to do. He could either issue a mandate or order on the Secretary of State to deliver those commissions, but if he did that the Supreme Court had no means of enforcing its order. He was a good politician himself; he had been Washington's political agent in Virginia. He knew Jefferson like a book, and knew the resourcefulness of that great leader, and he knew that Jefferson wanted to bring the judiciary under his control, and he would tell Madison to refuse to pay attention to the mandate, and thus the Supreme Court would be more ridiculous than before. That would be the situation if he issued the mandate. On the other hand, he could have dismissed the suit upon the ground that it involved judicial coercion of the executive department of the government in political affairs, and that is what many thought he would do. But if he had done that, or if he had continued the case, then the great and fundamental question which went to the very heart of our Constitution would have been passed over forever. Nobody could say when another such case would again arise; and here was the opportunity for the Supreme Court to pass upon a question that was then paramount in the minds

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of the people and upon the answer to which depended the perpetuity of this republic, as to what power can determine the constitutionality of laws. In fact, no other case involving that question arose until fifty-four years later, when the Dred Scott case was decided in 1857. And so, if Marshall had dismissed the case for reasons similar to those stated, there would have been a period of seventy-five years, from the foundation of our Constitution until the Dred Scott case, in which Congress would have been supreme, during which its exclusive jurisdiction over legislation never would have been questioned; and it is as certain as human nature that after the lapse of three quarters of a century no man would have had the temerity to suggest that the judiciary could overthrow acts of legislatures or Congress; and our whole scheme of government would have been different from what it is to-day. And the laws that have been passed, infringing upon human liberty and destroying property, might have destroyed our civilization as we now have it.

For that good reason, then, Marshall resolved to take this little and trifling case of *Marbury* v. *Madison*, that amounted to nothing at all, and use it as the pretext for handing down to the American people the first great table of our constitutional law. He felt that this issue was as important to him and the same as that for which he fought under Washington; and he felt that if the nation was to endure, that question must be decided; and therefore *Marbury* v. *Madison* was decided, not by a judge, not by a lawyer, but by a prophet, a statesman and a hero.

I believe that I am overconservative in saying that judicial annals do not show another instance of such daring audacity as Marshall displayed in deciding this case. The audacity and courage consisted in this, that he actually persuaded his associates upon the Supreme bench to agree with him that Section 13 of the Ellsworth Judiciary Act was unconstitutional. That startling fact is shown by this: Section 13 of the Ellsworth Judiciary Act was drawn by

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Oliver Ellsworth, who was infinitely a better lawyer than Marshall; one of the greatest lawyers in the world. He had been a member of the convention that framed our Constitution, and he had stepped out of the Constitutional Convention into the Senate of the United States as senator from Connecticut. There was also by Marshall's side Justice Patterson of New York, who was also a member of the Constitutional Convention, and also helped draw the Ellsworth Judiciary Act. There were twelve men, every one of whom had been a member of the Constitutional Convention and of the first Congress, all of them superb lawyers, who had helped draw the Ellsworth Judiciary Act; and not one of them imagined for a moment he was drawing an act that violated the instrument which he himself had helped to frame.

The government had recognized that section for fourteen years. The Supreme Court in four specific cases had recognized its validity in the matter of writs of prohibition. And in spite of all that this wizard, this man of mystery, actually persuaded his associates on the bench that this section, which nobody else had ever questioned up to that time, was unconstitutional.

The reasoning that Marshall adopted in construing Section 13 was substantially this: Section 13 said the Supreme Court should have power to grant writs of mandamus and prohibition in original suits. Marshall said that was unconstitutional, because the Constitution gives the Supreme Court original jurisdiction in specific cases and appellate jurisdiction in others. So, he said in his opinion, was this a ministerial act? It was. Did it furnish the proper remedy to compel the Secretary of State to perform this ministerial act? It did. And there he stopped to read a lecture to the President, and Secretary of State and all the people, saying that no President, however powerful, could ever sit in the presidential chair that did not have to obey the law as much as the humblest citizen in the republic. Then he used that great sentence that has been the pride of our re-

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public, and which should be read the world around, that ours is a government of laws and not of men. Then was there power to grant the writ? Yes. Under what law? Section 13 of the Ellsworth Judiciary Act. But does Congress have the power to pass Section 13 of the Ellsworth Judiciary Act? It does not. Why does it not? Because the Constitution provides that it may not. But Congress having violated the Constitution by passing Section 13, have we, the court, the right, and is it our duty to say that Congress has done what it has not the right to do, and have we the right to overthrow the law? We have.

I have taken 9,000 words up to this time to reach the main point. I will give you an illustration of his method of reasoning. He said our Constitution is the heart of our national life. It was adopted by all the people of our nation for the control of every department of the government and of the people themselves. It is the fundamental law of the republic. It was established by the people themselves. It controls everything. It creates Congress and it says what Congress shall do and what it shall not do; what the President shall do and what he shall not do. The courts are sworn to uphold the Constitution. Suppose, then, that Congress in an emergency, or for any reason, passes a law that the Constitution says it shall not pass; when that matter comes before the court, what shall the court do? Uphold the Constitution as they have done, and do to-day? If so, it may strike down a statute that violates it. Or uphold the statute? If so, they must strike down the Constitution.

For example, the Constitution creates only one crime, treason. It carefully describes what the crime is. It consists only in levying war against the United States and giving aid and comfort to the enemies thereof, and that can be proved in only one way, by two witnesses to the same overt act, or by confession in open court. Suppose, Marshall said, suppose that Congress in time of war construes treason as consisting of something else, or provides that it shall be

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proved by substantial evidence, or popular clamor; and a man is indicted, and his life and liberty are at stake; and the question comes before the Supreme Court, what shall the Supreme Court say? Shall it uphold the Constitution? If so, it must interpose that Constitution between the citizen whose liberty is at stake, and the government. Or shall it uphold the statute? If so, the Supreme Court, that is sworn to maintain the Constitution, must throw to the ground the bulwarks of our liberty which it is sworn to defend.

Or, again, Congress has no power to put a duty on exports, but may tax imports only. The Constitution says so. But suppose that in time of great emergency and financial need, and in obedience to a popular demand, Congress should pass a law to raise money taxing exports, and the exporter should refuse to pay the tax, and bring a suit to enjoin its collection, what will the court do? Uphold the law? If so, destroy the Constitution. Or uphold the Constitution? If so, destroy the law.

That is an example of his reasoning. That is the history of the origin of the great and fundamental doctrine upon which rests American constitutional jurisprudence; the fundamental law that gives stability to all of our legislation; the heart of our constitutional system. That insures us the protection of the ordered liberty which under the blessing of God we now enjoy.

That decision of Marshall has been more attacked than any other one in judicial history, except the one I shall mention in a moment. And within the present period—for, friends, we are entering the gravest period of our history from a social and economic point of view—within the next ten years the principle underlying it will have again to be invoked for the preservation of the American institutions intact and unimpaired. The situation which Marshall confronted will come again.

Senator Owen of Oklahoma introduced into the Senate a resolution to the effect that when Congress passes a law

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the Supreme Court shall not declare it unconstitutional. Chief Justice Clark of South Carolina has written a new argument, repeating the old one against the power of the courts over legislation, which is printed as a Senate document. The argument is a persuasive one. On the streets of Omaha within these ten years you will hear from the lips of ignorant and well-meaning men and women, and from the lips of demagogues, that this judicial power over legislation is not in the Constitution; that it is a judicial amendment; that to give Congress this power serves no useful end of liberty or of property; that it is not necessary for the protection of rights of persons, the security of property, or individual liberty; and that it is only used to serve evil interests.

I had that argument made to me within the last week by an able man from whose lips I never expected it. In the form he used, it is almost unanswerable. You have all heard it time and again. In that form the argument is: The same thing happened in England and the exclusive power of the legislature was upheld; and the English Parliament in turn upheld the protection of individual liberty, respect for the rights of the minority and the sanctity of property. And in England Parliament is omnipotent, and the courts do not dare to touch a line of its legislation. But is this a valid argument? Can it be said that democracy in England has yet reached its crisis or stood its test? What is it that throughout the centuries has given moderation and restraint to English law, and has resulted in the preservation of the rights of minorities and individual liberty and property? Macaulay answers that question. He says it is the provision, the firmness, the moderation, and the sense of justice of that most strange body of men which, generation after generation throughout the centuries, has ever guided the policies of an empire, the British hereditary ruling class, which, Macaulay says, time and again has stood between ravaging lawlessness and the arbiters of liberty.

In 1911 I read with infinite concern every line of that de-

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bate in which the British Parliament, under the leadership of Mr. Asquith—proving him the greatest parliamentarian since Gladstone—overthrew the House of Lords. From the moment that bill was passed the conservative element in England was doomed. I hope it will always be absolute in foreign affairs. In domestic affairs it is only a matter of time. Five years or ten at most will see that restraint removed from British legislation; and then, then when the impassioned majority of the people express their will, bred of anxiety and mistrust in legislation represented by an act of parliament which nobody can touch, then we shall see what will become of individual liberty and the rights of minorities and the sanctity of property. Then British democracy will have met its final test.

We do not have any ruling class, thank God. Instead, our fathers, divinely inspired, gave us this guarded provision of our fundamental law.

And, friends, I believe with all my heart that the time will come when, after we have passed through these experimental stages, and the balances have been established, it will be found that our American institutions, with the power of the judiciary as their heart, will be not only for the administration of justice but for the preservation of our liberty, the ablest system of government ever devised by the sagacity and the wisdom of man.

When my first two volumes were out my good friend, President Nicholas Murray Butler of Columbia University, said: "You know, I am very much concerned about your last two volumes (which had not been written at the time); they will be the most important, because they will deal with judicial decisions of great cases; they lack that human interest, however, and that thrill which makes the first two volumes so agreeable, dealing as they do with Marshall, the backwoodsman, soldier, diplomat and politician, all very entertaining; but when it comes to Marshall sitting on the bench and delivering opinions, your last two volumes, while they are vital, won't be read." So I said to him, "I

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have gathered my material for the last two volumes, and the truth is that every one of the stories of those mighty decisions is full of movement and human color, and I am obliged to shade down the facts in order to make the people believe that I am telling the truth about them."

Then I met Dave Belaseo, the great dramatist, and I said to him, "Would you like a plot for a thriller?" He answered, "I would indeed." "Well, then," I said, "if you want a plot with two thrillers, take *Fletcher* v. *Peck*."

I wish it were possible to throw on the screen a scene laid back in the year of 1795, in the little town of Augusta on the banks of the Savannah River, in the great forest of the South. It was then the capital of the sovereign commonwealth of Georgia. The legislature was meeting there, and it was not unlike many other legislatures in our history. It was being corrupted; it was being bought, openly and deliberately bought by a land company that wanted a bill passed by that legislature, selling to the land company forty million acres of land situated in what is now states of Georgia, Alabama, Mississippi and Southern Tennessee, for the magnificent sum of about one cent an acre, or $500,000. Every member of the legislature was bought but one man. One man alone was not bought. The whole story is full of remarkable things. Some of the legislators were bought with land; some were bought with slaves and some were bought with money. And they were big men, too. The head of the Senate was the senior senator of the state, Senator James Gunn of Atlanta. He stood around there in a broadcloth coat and tall boots, with a whip in his hand, commanding everybody to obey his orders, and emphasizing his commands with threats of political and even physical violence. The federal judge for that district was secretary of the land company. He issued the warrants, and browbeat the members of the legislature. The chief justice of the supreme court of the state was also in the gang—Thomas Wilson, Justice of the Supreme Court of the United States; and he had $25,000 in his hands, not to buy the members of

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the legislature, but Justice Wilson of our Supreme Court was a land speculator, and he knew the time was coming very soon, and he would have to be on the ground to take care of his own interests.

The bill was passed, ordering the governor to make a deed to the land company of these forty million acres of land situated in Georgia, Alabama, Mississippi and Tennessee, when it paid over $500,000. Well, the company bought the land, and the governor made the deed. And, incidentally, by relays of horses, a certified copy of the law was carried to Philadelphia, New York and Boston, where the money was to be raised for the enterprise. The members of the land company stopped in New York and obtained an opinion from Alexander Hamilton; and he gave them a model legal opinion, less than one page long, to be used as part of their prospectus for the sale of the land. And in that opinion Hamilton said that this grant to the land company was a contract entered into when and binding from the time the land was accepted and paid for; that the Constitution of the United States permitted that contract; that no future legislation could disturb it; and that the title to the land was good.

And upon that they began to sell land. They sold it everywhere, but Boston was the center of the sales. There was considerable excitement all over the country, something like the excitement in Paris over the South Seas bubble. Merchants, milliners, school-teachers, everybody bought land. They bought it in good faith. They believed that they had a right to buy that land and that the title was good.

The minute the people of Georgia heard what their legislature had done, a perfect storm of righteous wrath and indignation went up all over the state. General James Jackson, junior Senator from Georgia, received a copy of the law and handed it to Washington. As soon as this uprising among the people started Mr. Bradley resigned, went to Georgia and led the proceedings against the fraud. They

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elected a new legislature, which was charged with the duty of doing away with this fraudulent law.

Now, the spirit of our government, as contradistinguished from other governments, is that our institutions are designed to prevent the people from injuring themselves by carrying into effect by momentary passion an opinion of the moment, and to allow them to avail themselves of the priceless benefit of their sober second thought. This legislation is an illustration.

Five years before that very law had been passed the people wanted it passed, and the reason it was not passed five years before was because the land company did not put up the money; and the reason the people wanted it passed before was that the state was deeply in debt. The times had changed, and they wanted to get out of the sale if possible. The change in the public view of the righteousness of the law all took place in five years.

It happened in this wise: A young New England schoolteacher by the name of Eli Whitney came down to Georgia. He came down to teach, but for some reason he was not a teacher. The widow of Nathaniel Green discovered that he was an inventive genius. He invented a machine to separate cotton from the seed. Up to that time nobody could make anything out of cotton, but with this invention cotton increased in value and everybody wanted to plant it. It developed that this was the best cotton-growing country in the world. In five years the price of land doubled, trebled and quadrupled.

The people rightfully demanded that the land which they wanted sold five years before should not be sold now. The new legislature met and began to study the question. They decided that it would not do merely to repeal that law. They declared it a law of usurpation; they so declared in a resolution; a most extraordinary resolution. And they finally passed a law expunging the old law from the record; this provided that all evidence of the old law was to be taken out in front of the state house, put on a pile of wood

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and burned, in the presence of the Supreme Court, the legislature and the executive officials. But just as it was about to be lighted General Jackson, with the true theatrical effect, spoke up and said, "Hold! Hold! This vile thing must not be consumed by fire lit by human hands. Ah, no, it must be lit with fire from the rays of the mighty luminary of the heavens"; and he took out his sunglass and set fire to it.

Then they fought it out with the land company, and matters turned out as might have been expected. Many men who bought this land in New England, Philadelphia and elsewhere were not innocent; they were in on the whole scheme. But others were innocent. They became frantic. The school-teacher and the banker and merchant, and everybody else, had put their money, many of them all they had, into this Georgia land, and they felt that they had been robbed. They formed a society known as the New England-Mississippi Society, and they appealed to Congress.

By this time the national government, on account of the Indian treaties, had taken the matter over. The victims appealed to Congress to appropriate enough money to reimburse them. Year after year the matter was threshed out in Congress.

John Randolph broke with Jefferson on it; pointing his long, bony finger at Gideon Granger, Jefferson's postmaster-general, he denounced him as a lobbyist, trying to buy votes with offices and contracts. Year after year the resolution to save these people who had invested was beaten. Finally the victims asked Congress to pass a law giving the Supreme Court authority to pass upon the legality of their titles. As an afterthought, as a sheer matter of last resource, in desperation, a suit was brought in Boston, in the United States Court, between a man named Fletcher and a man named Peck, who lived in Boston. This suit, *Fletcher* v. *Peck*, was to recover back the purchase price of 15,000 acres of this land, amounting to $3,000, on the ground that the title had been represented as good, that the Georgia

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Legislature had repealed the contract, and thereby the title failed, and he was entitled to receive back his $3,000.

There is absolutely no doubt whatever, as I shall show you in a moment, that that case was not genuine. It was what lawyers call a feigned case, a case brought by agreement in which a decision settles no disputed question, serves no real purpose.

It was continued on the original docket in Boston from time to time, and term to term, and finally, toward the latter end of 1809, just as a matter of disposing of it, got a certificate or opinion, or whatever it was, of the lower court on a special finding, that set out two facts that I will tell you about—very dramatic facts; and thereupon it was taken to the Supreme Court of the United States. And that is the case of *Fletcher* v. *Peck*. We know it was a feigned case because Marshall said so. At a reception he told young John Quincy Adams, Senator from Massachusetts, that the court had great difficulties in deciding it at all, because they knew the character of it.

Why, then, did Marshall decide it, and what did he decide? In the first place you must know, as the lawyers present already know, that our national Constitution has this provision. No state shall pass any act violating the obligation of a contract. The sanctity of contracts is not protected in any other constitution of any other country in the world. Ours alone has it. And the reason it was put in was because during the revolution and after the revolution and up to the time of our national Constitution, the states all over the country passed laws that permitted the violation of contracts of every kind. The Constitutional Convention sought by this provision to protect the rights of contract and of property.

In 1810, when this case came before the court again, there was the beginning of an epidemic of contract-breaking laws, and you will see another in our day. And so once more Marshall, the prophet and statesman, resolved at the risk of having his motives misunderstood, as they had been

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in connection with other decisions of the Supreme Court of the United States, to do everything within his power to prevent and to stop that epidemic of contract-breaking laws. If he had been a little man, a cowardly man, a person who wanted to observe the little dignities of the law, he would instantly have stricken that case from the docket as having been a feigned case. It took a man of infinite courage, a man of vision so great that the word "prophet" alone describes him, to decide it; and that courage and vision he had.

The Supreme Court of the United States spoke with a single voice to throw every obstacle in the way of the demagogue who wanted to break the spirit of the laws. What did the court, what did John Marshall decide?

In the first place, he said, Georgia must remember that she is not a sovereign state. There is no such thing as a sovereign state in its relation to the United States; Georgia must remember that she is a part of one great empire. Marshall used the word "empire." Jefferson used that word, and so did Washington. In those days they were not afraid of strong language. Georgia must remember that she is a part of one great nation, and as such Georgia is as much subject to the fundamental law of that nation as is any individual citizen within it. She can no more transgress that fundamental law of the nation, of which she is only a part, than any individual can do; and that fundamental law says that no state shall pass an act violating the obligation of a contract. Was this transaction between the land company and the legislature of Georgia a contract? It was. Did this subsequent legislation violate it? It certainly did. What, then, must this court do? Uphold the national Constitution, which says that the state shall not do that thing, or uphold the legislature which has passed an act in violation of the national Constitution? This court chooses to uphold the Constitution of the United States; and the legislative act of Georgia, repealing the contract which it previously made, is therefore null, void and of no effect.

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Now that is the great decision of *Fletcher* v. *Peck*. In the Dartmouth College case, in *Wilson* v. *New Jersey*, and in other epochal decisions, it was cited as the heart of our economic law. It has been cited more than any other decision handed down by the Supreme Court of the United States.

But within this present decade, and beginning almost now, you will see another assault upon it, and the argument against it is almost unrebuttable. Is it possible here, under our free institutions, for a city council or a state legislature to be bought by scoundrels, and for them to dispose of the patrimony of the people, and the people to have no recourse? And can it be possible that courts shall be employed to protect the plunderers? Certainly not. It is not possible.

What, then, is the philosophy of Marshall's opinions in the Dartmouth College case and the *Fletcher* v. *Peck*? It is this: Our economic civilization rests upon the sanctity of the plighted word, of the inviolability of a contract once made. Once made it must be respected, if there is to be any stability whatever between man and man. It goes to the very heart of our free institutions. You complain of corrupt public officials, of stupid public officials, and like the demagogue you appeal to the people to elect men who will undo their corrupt work. Who is responsible for that? It is the voters themselves.

And the meaning of *Fletcher* v. *Peck*, and the Dartmouth College case, and the *Wilson* v. *New Jersey* is this: If we are so slothful in the exercise of our duties as citizens that we won't even go to the polls and take the pains to vote; if we are so negligent of our civil rights as to permit the election of stupid men, or corrupt men, or idle men, then we cannot escape the results of our own misconduct as a people, any more than an individual can in a court of justice escape the consequences of his negligence. If we want the patrimony of the people preserved, and want sound government, if we want principles of justice to control public affairs, then it is our business to take at least enough time as citizens to be informed, not only as to the issues but as to the men, and to

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go to the polls for fifteen or twenty minutes every two years, and to see to it that the men in whose charge we have placed city, national and state affairs are honest and upright, and brave and industrious. That is the way to preserve the patrimony of the people, and putting it up to the courts is not the way. Of course the government exists for the people. But in a democracy public safety depends entirely upon the interest the people themselves take. And to-day the economic pressure alone is so great that the people can hardly live under it.

I have taken some time on these two fundamental decisions for the special and principal purpose of illustrating the development of the principles of our fundamental law under the greatest judicial statesman the world has ever seen. Upon us rests a greater duty than rests upon any set of men in our history before now.

I want to bring clearly to your mind the seriousness of the period upon which this republic has now entered. Within these next ten years you will see it begun. In the next ten years there will be more new and wild ideas proposed than in our whole previous history.

The time has come when not only senators, but every citizen, men and women, must carefully inform themselves upon those fundamentals of our Constitution which relate to treaties. The agitation for supplanting constitutional provisions by the whoopla method of treaty making has been under way for some four or five years. Now let us see what our Constitution says about it. I am showing you the beginning of the storm we will meet.

Our treaty-making power is absolutely unlike that of any other nation in the world; it is distinctively and purely American; and it was made so in order to prevent the American people from being bound and burdened by international engagements made by the diplomatic methods used by European and Asiatic nations at the time our Constitution was adopted, and perhaps used by those nations to-day just as fully as they ever were.

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How are our treaties made? I have found even some lawyers who were vague upon it. Our treaty-making power is better known to foreign governments than to our own public men, because nothing like it exists in the world.

Let us then repeat the A B C. This nation cannot be bound by an international contract except in the following manner: The President under the law, with his secretary of state, his delegates and their agents, but as far as responsibility is concerned the President alone can negotiate the treaty. When he has negotiated it, he lays it before the Senate. As soon as it is placed before the Senate his power absolutely ends, except that if he is dissatisfied he can withdraw it from the Senate. Then it is the duty of the Senate, under our constitutional provisions, to examine that treaty with microscopic and telescopic care, to go over every phase and provision of it and search out every motive for and every possible consequence of the making of it. And then the Senate can either amend, reject or ratify it; and they may reject or ratify it only by a two-thirds vote.

Now, that two-thirds vote is something tremendous, and brings to mind the foresight of our fathers in making that provision, the object of which was: First, that a treaty should and must be examined with the utmost deliberation, with the utmost care; and second, that as our domestic harmony is much more necessary to our national welfare than any foreign treaty, even so small a part of our own people as those represented by not more than one third of the Senate shall have the right to veto a proposed treaty; that it is better for us to have no treaty at all than to have a treaty which jeopardizes our own domestic harmony.

Now in the first place, remember that up to the adoption of our federal Constitution no such thing was ever heard of. Before that time, as now, generally, throughout the world, the executive department makes treaties. The legislature has nothing to do with it. But with us the Senate must fully ratify and concur and even advise. Not only that but for

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the reasons named, the treaty cannot become a law without the two-thirds vote of that branch.

Now when a treaty goes to the Senate the President's power ends. His constitutional part in its making is done. He must not attempt to influence the Senate; he must not attempt to coerce or even to persuade them. The President who does that, no matter by what method, acts autocratically. In passing upon that treaty every senator is exclusively an independent agent of the United States, and it is his duty and his business to examine that treaty solely and exclusively as a new proposition and as an agent of the whole republic, with a view to the future of the American people. And, therefore, a senator must not permit any influence whatever from the White House to affect his judgment. A senator who will vote against his judgment, or even without any personal investigation, for a treaty, merely because the President tells him to do so, is a conscious betrayer of the republic. And by the same token, a United States senator who will vote against a treaty which he otherwise would vote for, merely because it is submitted by a President belonging to another party than his own, is not a senator of the United States; he is merely a partisan guerilla.

I hope I have made that clear. I am talking about a constitutional provision. In obeying it no senator must be influenced by party consideration. One axiom of patriotism is that politics stops with the seashore. Another is that war suspends politics. And both of these principles, upon which rests the whole fabric of our republic, dictate that when you make a contract with a nation it is an irrevocable bond, and cannot be repealed like a statute. As long as that treaty endures the Senate is dealing with a foreign question, and cannot act from party considerations. Not only that; it is well known throughout our history, from the very beginning, the United States has been the most propaganda-ridden country of the world. That is one of the many reasons for Washington's Farewell Address.

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As I said earlier, the case of *Marbury* v. *Madison* grew out of that very thing. It has gone on throughout our history. It is due to our peculiar place in the world. It is an actual fact that there is not a government on earth to-day that would for one minute permit propaganda from other countries such as we are subjected to, and which is influencing our foreign policy all the time.

Now this provision in our Constitution for a ratification by a two-thirds vote was, as Lord Bryce says, put there so that when a President who did not have all the information at hand, or who had been deceived, or who was prejudiced, had negotiated a contract that was bad for the nation, the nation could honorably withdraw from that contract. That was the purpose of the whole thing. Obviously, then, the senator in exercising that function must be absolutely free from any influence from the White House; he must be free from any loyalty to his party; he must be free from any obedience to any temporary popular emotion. His duty, clearly and exclusively, is to the whole American nation, and to the performance of that duty his honor is irrevocably pledged.

Now, throughout our whole history that has been our policy. It is a significant fact that no amendment to any treaty has ever been made by the Senate of the United States which after a lapse of years did not prove to be wise and necessary. Not once has a treaty been ratified by the Senate of the United States which after a lapse of sufficient time has not been found to be wise and necessary.

I was a member of the Foreign Relations Committee of the Senate for ten years, and hundreds of treaties were disposed of with scarcely a newspaper comment. It was a part of the humdrum, everyday business of government; and every one of those treaties was gone over with microscopic and telescopic care in the committee room, and on the floor of the Senate, because we all realized that by the proper exercise of our treaty-making functions we were benefiting and protecting the whole American nation and every man,

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woman and child in it. Not only locally and immediately, but everywhere, for all the future.

For example, there was a treaty negotiated by Washington, called the Jay Treaty, which was thought to be very unfair to American interests at that time, and which was very unpopular with the American people. It was nevertheless approved by our government, for the simple reason that we were not in a position, having just fought the Revolutionary War, to stand on what we considered our rights and reject it.

The first treaty of this government negotiated by the Continental Congress, on later development under that French autocrat, Louis XVI, turned out to be so inimical to American interests that when Washington became President he deliberately broke it, as a monstrous measure, neither legally nor morally binding upon us. President Benjamin Harrison, one of the ablest men that ever presided over the destinies of this nation, said, and my authority for the statement I quote from a man of unquestioned reputation and standing, in my own city of Indianapolis, that throughout our history every time our diplomats have met about a council table with the highly trained specialists who represent European diplomacy, we have got the worst of the bargain, as President Harrison put it, we got the hot end of the poker.

Why does this happen? I know that it has been disputed. I suppose there is only one case where that in reality was true, and that is the "Geneva arbitration of the Alabama Claims," and yet in that case, as Senator Charles Sumner in the Senate proved and demonstrated, Great Britain had damaged us during the Civil War to the extent of hundreds of millions of dollars, and their skilled diplomats got them out of it by the payment of less than one-twelfth of the sum actually due. What, then, is the reason for this superior skill?

I think it can be very clearly demonstrated by a very dramatic circumstance.

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The intellect that made the reign of Queen Elizabeth the most brilliant in British history was the wonderful mind of the man called the great Lord Burleigh. He was the intellectual giant who made Queen Elizabeth's reign. It was he who formulated British foreign policy, which from that time to this has not been departed from by the millionth part of a hair's breadth.

Very recently another man of the family founded by Lord Burleigh, the master mind of the British Empire, with the same blood in his veins, the blood of the Cecils, has appeared in Washington representing and formulating the policies of his country in foreign affairs, as his ancestor did in Queen Elizabeth's time—Arthur Balfour. Through three centuries the great house of Cecil has gone on in that channel and has produced statesmen of the very highest type. The famous Lord Salisbury, for example, was the uncle of Arthur Balfour.

Now, gentlemen, you see these men are trained from infancy for their great, their vital task, which is safeguarding and advancing the interests of their country throughout their far-flung empire. It is a matter not only of training but also of breeding. Their mothers are just as able as their fathers, and their mothers were the daughters of men who are just as able as their fathers. Both are descended from generation after generation of traditional statesmen. Behind them is a traditional foreign policy which never has been deviated from by so much as the smallest fraction of a hair's breadth, which controls and directs them, and by which they themselves are guided and controlled. In the execution of that policy during the last three centuries, the resourcefulness and brain of those diplomats has been demonstrated times without number.

As far as I am concerned, if we intend to change our national policy, if we intend to begin carrying the burden of foreign obligations, let us act like sensible and prudent men and women. Let us first change our helter-skelter diplomatic system into a permanent diplomatic system by which

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our diplomats will be taken early in life and given a lifelong training in their delicate and difficult task, so that they will be prepared to meet their foreign antagonists upon equal ground. It occurs to me that this fact is illustrated by an astounding incident which recently occurred at the Limitation of Arms Conference in Washington. The very fact that our President was not advised of the secret interpretation put on the four-power treaty by our delegates, that startling fact alone ought at least to put us on inquiry.

I have cited this treaty-making power to show you why it is that it will be found in the end that the only safe and wise course for us to pursue is that laid down in our fundamental law, the Constitution of the United States; and to show also that its wisdom is so basic and farseeing and fits new conditions as they arise so perfectly, that future men and women may well believe that the founders of this nation were inspired by Almighty God.

I said a moment ago that we now see the very small beginning of a tremendous tendency. The idea now creeping in, that it is permissible to conclude treaties by the methods of college cheer leaders, by the whoopla methods of the western town, and bind the republic forever, instead of pursuing the methods provided by the framers of the Constitution, presents a very forbidding prospect for the future.

These propositions, social and economic, are beginning to manifest themselves. The storm is beginning. Within these ten years it will have to be faced; and let us face it as men and women and patriots. There will be more propositions advanced, too; some of them sound and conservative, but most of them poisonous inheritances of radical foreign groups. And we must make the choice.

How shall we make it? We must keep level-headed, and therefore there must be something on which we can plant our feet. It must be some rock of ages within whose shadow we can retain our sanity, and make decisions that will strengthen and not destroy the wonderful collection of effort and wisdom called American institutions. We have

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only the one thing, only one. We have no traditions. We have no hereditary ruling class, and the only thing we can rely upon is a steadiness which will retain our sanity and our judgment as the Constitution contemplated.

A few years ago I was speaking to the Missouri State Bar Association at St. Louis, and in front of me was a circle of reporters taking down my address. After I arrived home I received a letter from one of them, a keen and bright young man. It was a long letter. He said: "Dear Senator: I feel I must write you that I never can follow you again. Up to last night I stood for everything you stood for. I looked to you as the leader of my thoughts; but after last night I cannot. You made a fetish out of our Constitution. Your qualifications of our national government under the fundamental law is absurd. I remember your own words on the floor of the Senate, that the Constitution was made for the people, and not the people for the Constitution. It is nonsense to say that the government is anything sacred. Governments exist for human happiness; and when governments under their fundamental laws cease to protect human happiness they must be changed. And I feel I must write you and tell you that I am stunned by your attitude."

I was deeply touched. I was very busy, but did not want to delay answering him, because I knew he was honest, I knew he was able, and I knew that he represented a wide and growing class of young men and women. So I took the time to write him a long letter. I said: "Of course. Why present these platitudes to me? Of course, the government is not a sacred thing. I understand that. The Constitution was made for the people and not the people for the Constitution. I understand that; but, my dear boy, don't you see, and you especially, a newspaper man, that we are now entering upon the most serious period in our whole history? Don't you see that we are apt to go down in the last experiment, and good men and women will fail forever, unless we do something to put our feet upon a principle that is firm and stable? Don't you realize that we have

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never used the Constitution of the United States but to uphold the faith of the fathers?"

I received another letter from him, in which he said: "I apologize to you. The reason I did not see it was because I had my mind on little things. Yes, certainly, I see it now; and I am glad to have interchanged views. I tell you again you can count upon me to the end for my little help, to stand with you and anybody else in the fight for the Constitution, and the integrity of the national government during these ten years."

And then I wrote him again. I wrote him with the ink of my heart's blood and my tears, and I said: "I wish you would commit to memory these lines, which I believe were about the only genuinely inspired lines Longfellow ever wrote."

Thou, too, sail on, O ship of state!
Sail on, O UNION, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workman wrought thy ribs of steel,
Who made each mast, and sail and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis of the waves and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee.
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee!

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IN MEMORIAM.

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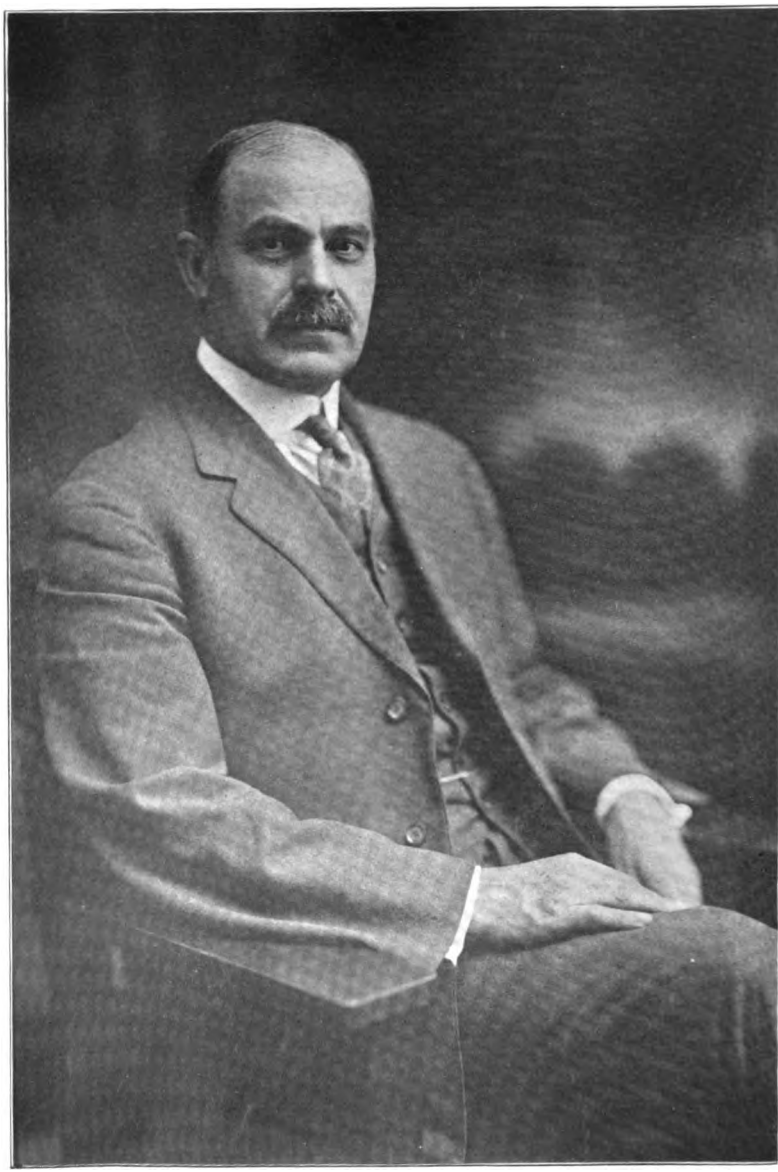

SHERMAN E. BURROUGHS

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SHERMAN EVERETT BURROUGHS.

BY HON. ROBERT J. PEASLEE OF MANCHESTER.

We of New England count much upon ancestry. We judge a man, or forecast his future, by peering into the past to learn from whence he sprang. By this test, much was to be expected of Sherman Burroughs. The strong fibres of generations of hardy New Hampshire farmers were knit in his frame. The calm, sure judgment of pioneers who thought out their every problem with deliberation and independence was his birthright. And in his veins ran the warm blood of men who fought at Bunker Hill, or in earlier times led those little bands in deadly skirmish with the Indians. Truly, he had a goodly heritage.

He was born in the hill town of Dunbarton, on February 6, 1870, and lived the life of a farmer's son there and in the town of Bow. His early days were but a repetition of oft-enacted scenes,—the New England country-bred lad, who wanted an education, went after it and secured it, in spite of large odds against him. Living four miles out of Concord, and in the days when the town neither paid tuitions nor carried unwilling or enfeebled pupils to school, he made his way into town each day as best he could, sometimes on foot, but oftener as the driver of his father's milk wagon. He made light of doing what in these times would be counted a day's work delivering milk from house to house, and was then ready for his real day at school. Thus early he began to pay his own way, and he kept it up to the last. There are few men of such prominence as he attained to, who owe so little to others, and fewer still to whom others owe so much.

He passed the examination for admission to West Point with high rank, but acceded to the wishes of his parents and declined the appointment.

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His school days over, he set his face towards Hanover and entered the class of 1894. It was just as the austere days of the old régime were about to close, and it was his good fortune that his senior year fell in the beginning of great Renaissance. To a man of Burroughs' temperament the advent of President Tucker, and the ideas he taught and stood for, must have had tremendous significance. While Burroughs was always a scholar of high standing, and a frequent prize winner, he was never what is known as a bookish man, and his ideals of life had little in common with the puritanic view. Among the hundreds of young men who listened so eagerly as the new president unfolded his philosophy of life at the once little regarded chapel services, none could have been more intent and very few so entirely responsive as Burroughs. It was the opportune meeting of fine material and the master workman.

The college authorities were not slow to recognize Burroughs' capacity and sterling qualities, and sought to retain him as one of the college staff. But his mind had long been set upon the profession of the law, and the same self-reliance that had taken him successfully through school and college made it easy for him to turn his back upon an attractive position with immediate financial returns. He went to Washington as private secretary to his uncle, Congressman Henry M. Baker, and for three years did double duty in the work of that position and as a student in the Law School of Columbia University.

Returning to New Hampshire, he passed the bar examination in July, 1897, and at once opened an office in Manchester. He soon began to attract clients, and again exemplified his abiding faith in the future by his early marriage. Most young lawyers think that such an event must wait until they are well established. Burroughs took the step before he had been in practice a year.

He was married April 21, 1898, to Miss Helen S. Phillips, of Virginia, and with his helpmate at once established a modest home in Manchester. To them were born four sons:

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Robert Phillips, Dartmouth 1921, Tuck School 1922, now engaged in shoe manufacturing in Manchester; John Hamilton, Leland Stanford Jr. University 1923, now a student in Yale Law School; Sherman Everett, Jr., Ensign in the United States Navy, Annapolis 1924; and Henry Baker, a student in the Manchester High School.

His ability not only attracted clients, but older and discriminating lawyers were quick to note the promise he gave for efficient service. No one who has practiced in Manchester in this generation has excelled David A. Taggart in fastidious choice of professional associates. When the death of William H. Drury and the retirement of Judge Bingham left Taggart without a working team in 1901, he chose young Burroughs for membership in the new firm of Taggart, Tuttle & Burroughs. Louis E. Wyman joined the firm in 1902, and William J. Starr shortly thereafter. Burroughs continued to be associated with the firm until his death.

His most notable work as a lawyer was done in the trial of causes before a jury. He excelled in every department of that service, but as long as Taggart remained active in trial work Burroughs had little opportunity to show his ability in argument. That was Taggart's chosen duty, and in it he easily outshone any of his competitors.

But while Burroughs did little in the early years of his practice as a jury advocate, he soon became widely known as a public speaker. For he was more than a mere lawyer, as that title is commonly understood to-day. He early came to be recognized for his public spirit and his willingness to serve a worthy cause. The old-time lawyer's position in the community was that of first citizen. It was to him that his neighbors looked for authoritative opinion and intelligent leadership. It is a matter for sincere regret that this has so largely gone out of fashion, and that so few lawyers now give of themselves to the community. Burroughs did so from the beginning.

It was inevitable that such a man should take an active

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part in politics. Of Republican antecedents and early environment, he was generally identified with that party. He was of those who greatly admired Roosevelt, but even the magnetic charm of that remarkable leader did not blind Burroughs to obvious faults, and he abandoned the Rooseveltian wing of the party when Roosevelt made his attack upon the courts. Burroughs was too sane, too well balanced, too good a loser to endorse any such unwarranted tirade. From that time his party loyalty was unquestioned, although he always acted with independence and frequently against so-called party measures.

He served one term in the New Hampshire House of Representatives, in 1901, and in 1912 made an unsuccessful run against Cyrus A. Sulloway for the congressional nomination. He made a good showing, but no one could then challenge the party supremacy of that veteran campaigner in the first district. Upon Sulloway's death in 1917, the practically unanimous party sentiment in the district was for Burroughs, and he was chosen at a special election held in May. He was re-elected in 1918 and 1920. In 1922 he declined to be a candidate. His decision to go to Congress, and to retire therefrom, were both thoroughly characteristic of the man.

In 1917 he had a lucrative practice, and had accumulated some property. He knew Washington life well, and understood perfectly that the salary of a congressman would not provide for a proper though modest mode of life there and the education of his boys. But the same fine confidence in in his ability to do that had taken him through many hard places in earlier life, now led him to devote what he had to a few years of exclusively public service, with the definite plan not to unduly prolong his stay. How many men enter upon public life with a like plan. How few have the courage and judgment to carry the plan into effect. It was not so with him. He had made for himself a distinguished name and place at Washington, and he was fond of the work he was doing. But these considerations did not cause him to lose

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sight of the essential soundness of his original plan. His sanity of judgment was not warped by the glamor of Washington life, as that of so many has been; and he was just ready to resume his place as a private citizen when the end came.

In Congress he served on many committees, some of them of great importance. In his first term he was on the committees on Merchant Marine and Fisheries. In the next Congress three additional assignments were given him—Education, Revision of the Laws and Woman Suffrage. During his last term he was given a single assignment on the committee on Interstate and Foreign Commerce. The progress a congressman makes at Washington is easily ascertained by following his successive committee assignments. Judged by this test, Burroughs progressed rapidly and was accounted as of the first rank when serving his third term.

Always a ready and convincing speaker, he took an active part in congressional debates. But he was not one of those who speak on every subject. He spoke only after deliberate consideration, and when there was real occasion that he should do so. His associates relied upon his judgment and respected his motives, and he always had their attention.

He not only did distinguished work on the floor of the House and in the committee room; but he was the personification of faithful service in the myriad incidental matters wherein constituents demand all sorts of assistance from their congressman. It would have been impossible for him to do otherwise. Always ready to lend a hand, especially for those in trouble, it was second nature for him to run all sorts of errands for those who did not always consider how great the demands upon his time were and in larger fields.

During the long recess in the fall of 1922, he devoted some time to the renewal of his practice with his old firm. In that period he took part in a protracted trial at Portsmouth, and argued the case to the jury. Although out of practice

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for years, he made what the presiding justice (his Dartmouth classmate, John E. Allen) declared to be one of the best jury arguments he had ever heard.

When he was setting out for Washington in January, 1923, to close his term, he said to those in his office: "This is my last trip to Washington. What can I do for you there?" It was indeed his last trip; and he set out on it, as he had on every other in his life, with the thought of service uppermost. Shortly after his return to Washington he contracted what at first seemed only a severe cold, but complications ensued, and he died after a week's illness, on January 27, 1923.

The tributes paid to him at Washington, and especially in his home city of Manchester, where a company that crowded the church waited for hours for the arrival of a delayed train from the capitol, all bore touching testimony to the esteem in which he was universally held.

So ran the course of his happy and useful life; happy in its usefulness, and doubly useful because it radiated to others something of its own joy in doing. Over and above all else, he will be remembered for his unselfish service for others, especially for the unfortunate and the under-privileged. He was a member of the State Board of Charities and Correction when it was but little thought of by most people, and lived to see it become a well-established department of the state government. He was a prime mover in the organization of the Children's Aid and Protective Society, and its president until his death. The ready response of the people to the call for its memorial, to be known by his name, shows what progress it had made under his leadership.

He was a devout member of the Episcopal Church, and served it in manifold ways. As vestryman, treasurer, delegate to many conventions, and even to the usually disdained chore of teaching a class in Sunday school, he gave of himself here as he did everywhere. Nor was his religion only that of good works. It was not overlaid with

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theology, nor marred by the whine of cant. In the most natural way and quite as a matter of course it was a part of himself.

While he this did and gave of himself, to help the less fortunate, he also lived and did much better things than these. He believed not only that present conditions ought to be relieved, but also that they ought not to exist. It was a part of his creed that if men would only get a decent view of life, much of the present distress would disappear. And so he was always prompt to do the chivalrous act, not merely to relieve the unfortunate, but as a part of his every-day contact with his fellow men.

Much has been said and written of him since his death, but nowhere have his life and character been so well summed up as in the following tribute from one of his long-time office associates:

"Sherman E. Burroughs measured up to the full stature of a man—kindly, temperate, just.

"The keynote of his character was kindness—his heart was touched by the needy, the obscure, the unfortunate; and he gave freely of his time and talents to help them stand erect.

"He was temperate in speech and conservative in action, but when the right occasion demanded he never faltered to speak boldly and act quickly.

"He was farseeing, wise and just in his dealings between man and man, and thousands in his own home city and throughout New Hampshire delighted to name him friend.

"He was one of the most lovable of men, with the qualities we all admire and hope to possess—truth, honor, righteousness.

"In his home he lived in the pure atmosphere of love, devotion, sympathy; in the world that of deserved friendship, respect and admiration.

"To every worthy cause he gave the fruits of a useful, unselfish devotion, and the tribute of respect that was his in death is a fitting measure of his work, worth, character. He has left to us, his associates, a sacred memory of a noble life."

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ALBERT R. HATCH.

BY ARTHUR E. SEWALL OF PORTSMOUTH.

Albert Ruyter Hatch was born in Greenland, New Hampshire, on the 10th day of August, 1882, the son of John Hatch and Alice Caroline Benton Hatch.

"Pete," as he was familiarly called by his friends and colleagues, descended from sturdy stock, and his paternal lineage may be traced back to Captain John Hatch of Portsmouth, a mariner, who died in the year 1701.

His early education was received in the public schools of Greenland, New Hampshire, and in the fall of 1899 he entered the Portsmouth High School. The following year he matriculated at Dartmouth College from which institution he was graduated in 1904. The following fall he began the study of the law at Harvard Law School, receiving his Bachelor's degree in the spring of 1907. He successfully passed the New Hampshire Bar examination and entered into the active practice of law in the office of John Kelley at Portsmouth, under the firm name of Kelley, Harding and Hatch. Mr. Harding soon withdrew from the firm and the partnership of Kelley and Hatch was formed, which partnership continued until the death of Mr. Kelley, in September of 1913; from that date Mr. Hatch practiced his profession alone. Mr. Kelley was for many years counsel for the Boston and Maine Railroad and for many insurance companies, and at his death Mr. Hatch continued as counsel for them. He was extremely thorough and painstaking in all his work and his every effort was devoted to the best interest of his client.

No man at the Rockingham County Bar held the trust and confidence of the public and of his fellow members at the bar to a greater degree than did he.

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Albert W. Hakes

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On June 12, 1905, he was married to Rosalie F. Littlefield of Stratham, New Hampshire, and of this union were born two sons, Harris, born February 10, 1906, and Francis, born March 2, 1909.

Always an ardent exponent of athletics, he spent much of his time in baseball and football and in nearly every other form of athletic sports; and as his sons grew older he became to them a sort of playmate, entering into and enjoying with them all of their sports. Few men devoted as much interest and time to their physical well-being as did he, and it was while engaged in a game of handball that death came to him suddenly on April 4, 1923. To all of us with whom he was associated daily the news of his death came with stunning effect, and it was days before we could realize that a man so full of vigor and enthusiasm for the things of this world could have been taken away.

The funeral was held at Greenland at the home of his sister, Mrs. McLachlan, only a short distance from his ancestral home, and his body was interred in the public cemetery at Greenland. The deep respect entertained for Mr. Hatch was manifested by the presence of nearly every member of the Rockingham County Bar and many prominent persons from adjoining towns.

As a classmate at college and in the law school I learned to know him as perhaps only school mates learn to know one another, and in his going there is a personal loss which cannot be expressed or be forgotten, and I know that no man of the Rockingham County Bar will longer be remembered by his associates than he.

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CHARLES H. HERSEY.

BY HON. JOHN E. ALLEN OF KEENE.

Hon. Charles H. Hersey died at his home in Keene, March 2, 1923. He was born in Falmouth, Maine, September 9, 1842, and was a son of Rev. and Mrs. Levi Hersey. He was educated in the country schools and worked in a country store until 21. He served his country in the Civil War, enlisting in the navy, and being at sea throughout his term. After honorable discharge, he entered Maine State Seminary, and later became a student at Bates College from which he graduated in 1871. He then completed his study of law at Bethel, Maine, and after admission practiced in that state until 1876, when he went to Springfield, Massachusetts, where he practiced for two years. In 1878 he came to Keene, where he uninterruptedly carried on his practice, practically to his death. When he came to Keene, he associated in partnership with the late Hon. John T. Abbott, until the latter's appointment as minister to Columbia by President Harrison, in 1889.

Mr. Hersey served two years as a representative in the State Legislature, was a state senator in 1887–88, and a member of Governor Jordan's council in 1901–02. He was Cheshire's solicitor for many years, a member of the Keene Board of Education for a long term, and at different times held office as city solicitor, library trustee and city auditor in Keene.

He was a Republican in politics, attended the Congregational Church, and was greatly interested in Masonry, being a 32d degree Mason and at the head of the State Knights Templar Commandery in 1911. He married Miss Carrie Kimball of Bethel in 1877, and she survives him.

Brother Hersey was the last of Keene's old school type of

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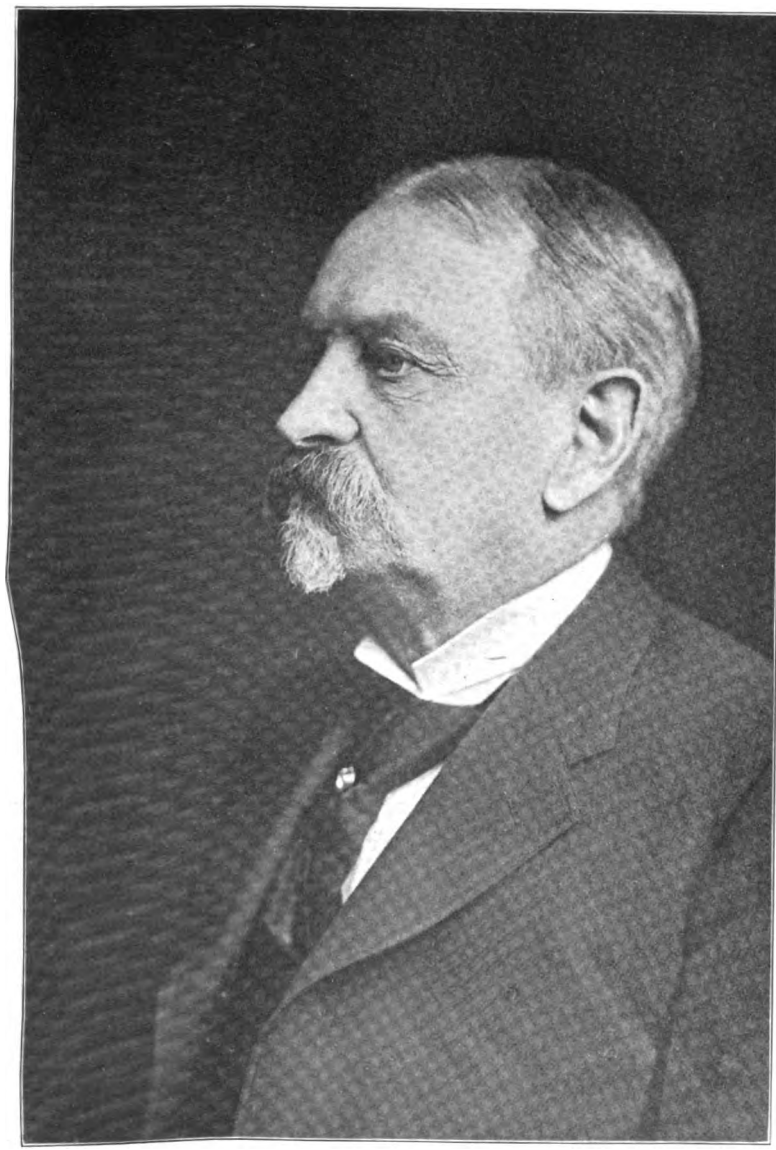

CHARLES H. HERSEY

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lawyer to pass on. His carefulness in giving advice, his precautions in examining the law before instituting litigation, his counsel of policy to avoid law suits, his ability in examining witnesses and in argument and his soundness of judgment made him a good and able lawyer.

He had no unusual devotion for the law as a science or philosophy beyond the needs of his immediate professional activities. Scholar and student that he was, he visited realms and explored regions of literature other than of jurisprudence in his recreations, and academic discussion of legal points and questions did not arouse much intensity of interest. His enthusiasm for the law for the law's sake, if not lacking, was not marked. The study of modern legislation and court opinions was not a pastime with him, and his conservative nature did not take kindly to the innovations they introduced.

His soundness of judgment and effectiveness of argument were in large measure due to his understanding of human nature. He had the faculty, almost the gift, to interpret with remarkable accuracy human conduct in its ordinary and usual workings. An ordinary man himself in the sense that his tastes were simple, his living plain and his associations normal, his philosophy and understanding of life gave him the powers of discernment and judgment which, with his force and facility of expression and argument, established his position as a leader of the Cheshire Bar.

Added to his understanding of men and life, his friendly nature manifested itself in his accommodation and readiness to help and counsel, and it was a habit and practice for many to go to him with their troubles and problems, outside of merely professional consultations. To the younger lawyers he was particularly kind and helpful. His advice to settle litigation outside the court room seemed at times carried to the extreme of foregoing one's fair rights, but his philosophy of peace in place of dissension and his concurrence with the law's favor of compromises can appeal to sober afterthought as only reasonable and wise, and it was a

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manifestation of his friendliness that he would go so far in concessions and accommodation. While strongly partisan in his stand against all persons and things he opposed, he never sacrificed his client's interests to any stress of prejudice.

Brother Hersey's ambitions did not measure up to his abilities. Reluctant to seek personal advantage, with no incentive for power and authority, with but little inclination to hold office, with no disposition to accumulate wealth, he did not want much for himself. He was interested in the daily life and affairs of his community. The business of the city in its various departments, the schools, the church, goings on around the square where he had his office and at the courthouse, the Masonic fraternity, local politics and the concerns of his acquaintances, neighbors and friends, all had his interest and absorbed much of his attention. The welfare of his community was ever in his mind and heart, and as a citizen he formed and established an influence for its good that was deep-seated, far-reaching and long lasting, and he served well his time and place.

Brother Hersey had scholarly attainments. Books were his chief and almost only recreation, and his home library was a well-selected collection whose company never failed him. His broad area of information, his fine sense of humor, his learning from the books which constitute the best of our literature, and his interest in public affairs, with his powers of observation and expression, made an hour spent with him always worth while. Loyal to friend and cause, he was of a stanch and stalwart partisanship that left no uncertainty about his views and opinions.

For his ability, character, attainments and human qualities, Brother Hersey's place in the memory of those who knew him is secure and permanent.

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CHARLES H. KNIGHT.

BY HENRY A. SHUTE OF EXETER.

Charles Henry Knight, a member of the Rockingham County Bar and clerk of the Superior Court, born at Hatfield, Massachusetts, April 26, 1848, died at Exeter, New Hampshire, 1923.

Under ordinary circumstances I should have felt it my duty to write the simple testimony of a friend and legal brother who appreciated his virtues and did not care to comment on his faults, in other words, to follow the advice of that trite and kindly maxim, "De mortuis nil nisi bonum." But my brother Knight, at the age of 59, wrote the story of his life for the guidance of "Any brother of the bar speaking on resolutions in his memory," and so, knowing and appreciating my brother's virtues and faults, and feeling sure that it would have been in gross violation of his wishes to have followed the usual custom, I am giving a short story of his life as a man, as a lawyer and as an official.

He had the sensitive honesty of a strong soul and an utter contempt for hypocrisy, and though he be dead, I should feel the influence of his displeasure should I fail to tell the story as I believe he would wish to have me, and so I can do little more than follow his own story.

His father, Joseph Hyde Knight, was a teacher in public and private schools in Massachusetts, a good singer, a fair violinist and a lover of music. His mother was Diana Belden, a distant relative of John Fitch and Ethan Allen, the former, claimed by some to have been the inventor of the steamboat. My brother says, "Our house was the resort of young people and resounded with laughter and music. My father was the best man I ever knew and my ideal of a Christian."

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My brother Knight in 1868 and at the age of nineteen was married to Adeline Augusta Foster of Pittsfield, Massachusetts, a classmate at Wesleyan Academy, Wilbraham, Massachusetts, whom he described as "A young lady of great talent, untiring industry and of indomitable ambition, an omnivorous reader and a brilliant conversationalist at her best." He continued, "I have never known a more charming girl or woman, or a more delightful companion." After their marriage they moved to Kansas where they taught school, sometimes together and sometimes in different schools.

In 1878 he came to Exeter and began the study of law in the office of the late Judge Thomas Leavitt. In 1880 he was admitted to practice, taking high rank in the examinations. In 1881 he became the partner of Judge Leavitt under the firm of Leavitt & Knight, a partnership which was dissolved by mutual consent in 1886.

My brother Knight was a well-read and sound lawyer. He had a legal mind. He loved to discuss law and cases, to philosophize over the development of jurisprudence and history of English law. He made an excellent brief. He prepared his cases thoroughly, and his arguments were logical and covered all points raised in a trial. But they were not strong arguments or well calculated to impress a jury. He was not by nature fitted for the keen give-and-take of a jury trial, nor to meet and to do business with the class of clients and witnesses that the jury lawyer, in order to be successful, must meet and impress.

He says, and I know it is the truth, "I can say for myself that I always consulted my client's interest as I understood it. I never advised litigation unless I believed my client was in the right, both morally and legally, and that I could sustain that right, nor then, if a reasonable settlement could be effected. I never instituted suits nor delayed them to enhance my fees. I never overcharged a client. I never engaged in any practice which would entail needless or severe hardship upon the defendant, or, if I could possibly

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avoid it, injured an innocent person. My prosecutions were not persecutions. I never insisted upon the last farthing of my just dues and never refused to render needed service because my would-be client could not pay. I never advocated any cause nor did any business in which there was the slightest color of fraud upon the Court or upon individuals. I never took advantage of any position or relation to make money which I had not honestly and legitimately earned."

And yet, so curiously inconsistent was my brother at times, that in this same history he speaks of a certain case reported in '67 N. H. 305, commenting with some bitterness on an error of the reporter in which the name of Arthur O. Fuller and his own were misplaced, and he was made to appear for the defeated party instead of for the victor, and says, "There was neither equity nor honor in my client's case. A decent man would hardly assert the right as he did, and it seemed too bad that I could not have had the satisfaction of appearing in the report upon the winning side, when there was so little moral satisfaction in the result."

I feel sure, from my rather intimate knowledge of him, that he was true to the ethics of his profession, and I further believe that he was so conscientious in balancing the relative rights of plaintiff and defendant in many of the cases offered him, that he unnecessarily offended good clients who honestly believed in their side of the case, and who took legitimate and worthy causes to other lawyers.

My brother Knight ought not to have entered upon the general practice of law. He would have made an invaluable man for preparing cases, making briefs and giving advice on purely legal matters. He would have made, I am sure, an excellent teacher of philosophical subjects. He loved to read and to write on questions of advanced philosophy, and was never happier than when expounding questions of advanced thought with others equally interested. The philosophy of law was an absorbing pursuit. The actual practice of it was a nightmare to him.

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He escaped the drudgery of the general practice of law by an appointment as clerk of the Superior Court of the County of Rockingham, and in this office he was thoroughly reliable and industrious in the highest degree. He was always extremely careful to keep down expenses, to save the county from needless and foolish expense, and administered the duties of his office with accuracy and faithfulness.

During the last few years of his life there were extended periods when he should have been under a physician's care and away from all official duties, but so strong was his sense of duty to the county that he persisted in going to his office, and in performing the countless details, which to some would have been intolerable drudgery, but which to him, I am sure, were a duty and a pleasure.

A very unfortunate misunderstanding between him and his first wife resulted in a separation and a divorce. As one of several counsel, which included Judge Leavitt, Mr. Frink of Portsmouth and Mr. Fuller of Exeter, I can truly say that there was nothing in the entire case that reflected in any way upon the uprightness or the good intentions of either party; that it was a case of utter incompatibility which had come to the point that a separation was inevitable and a divorce in every way desirable.

He was subsequently married to Miss Bessie Chesley, and, as he said, "With her I lived two years of unalloyed happiness. Her death was the greatest affliction (among many great afflictions) of my life, and left me with very little personal interest in living."

Later on he married Delia Alberta Nason, an Exeter girl, with whom he lived until his death, and who was a kind, faithful and affectionate wife and the devoted mother of his two children, who survived them, his wife having died a few months after his death.

My brother Knight was a man of a most peculiar mental make-up. He had a strong religious sense; he loved philosophy; he was naturally of a melancholy disposition; he was utterly destitute of that saving sense of humor that would

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have been so much help to him in time of misfortune; he believed, probably owing in a great measure to his many disappointments, that, to use his own words, "Intolerable evils are overwhelming a sin-cursed, ignorance-burdened, sorrow-laden world."

His autobiography contained, towards the end, a report in the nature of a questionnaire, in which he gave a complete and accurate description of his physical make-up, his character, his reputation, his habits, and various matters of an intimate personal nature in which, I am bound to say, he did not give himself nearly as much credit as he deserved. It was another instance of the oversensitive honesty that pursued and predjudiced him during his entire life. At the close of his autobiography he says, "If anyone, whether brother of the bar or not, commenting upon my departure, can say of me, 'He had a heart capable of loving, a mind capable of thinking; he was honest in his dealings, he loved the truth if he was not always loyal to it,' this is all I deserve and all I ask."

Fair and just to people in general, he was neither fair nor just to himself. If he had been more so, he would have realized that he left behind him many strong friends, and that he numbered as friends all the members of the bar with whom he was brought in contact, and who, perhaps, more than other people, can appreciate his faithful work and his real accomplishment in the careful filing and docketing of thousands upon thousands of legal papers which were entrusted to him for safe-keeping, any one of which, if lost, might become at any time a serious loss to the records and to the persons interested in them.

For his real friendship and kindliness of heart, the members of the bar are grateful to him; for his industrious accuracy as a public official, the public has great reason to thank him.

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JOSEPH MADDEN.

BY ROY M. PICKARD OF KEENE.

Joseph Madden was born in Central Bridge, New York, on July 1, 1866, the son of Thoms and Nora (Cain) Madden, and died in Keene, New Hampshire, September 2, 1922.

He came with his parents to Keene when he was about three years old, and practically the balance of his life was spent in this community. He received his education during his attendance at the public schools in this city, and finally entered the law office of Don H. Woodward of Keene. He was admitted to practice law in the New Hampshire courts in 1889, and opened an office in Colebrook, but remained there only one year. Returning thence to Keene, he continued to reside and practice here until his death, which occurred just following his return from a visit to England and France.

His early years were years of struggle. His parents were poor, and his opportunities of obtaining an education were limited. He left school at the age of twelve years to work in a factory, but work became dull, and he finally went back to school. There he spent about two years, and again left and went to work. These years completed his actual school attendance, but this lack of early education was more than made up by his wide range of reading, and the knowledge derived from travel and contact with men. The first years of his practice also were years of real struggle, for he had no prestige and no influential circle of friends or relatives to make easy the way to extensive practice. His real ability and pleasing personality, however, soon made him noticed, and his practice soon became varied and extensive. In due time he was admitted to practice in the Federal District Court in the State of New Hampshire and in the Supreme Court of the United States. Brother Madden was City

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JOSEPH MADDEN

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Solicitor of Keene for the years 1919 and 1920, and served two years as councilman and two years as alderman in the City Government. He represented his ward in the State Legislature in 1909, and had been president of the Cheshire County Bar Association for many years prior to his death. He was president of the New Hampshire Bar Association for the year 1921, and was at the time of his death chairman of the New Hampshire Divorce Commission. He was an active member of the American Bar Association, and was a member of its important committee on Uniform State Laws.

He was prominent in fields other than law and politics. From 1911 to 1916 he was captain of Company G, New Hampshire State Guard. He was past president of the Keene Lodge of Eagles, past chief ranger of the Foresters, member of Keene Council Knights of Columbus, past exalted ruler of Keene Lodge of Elks, member of the St. Jean Baptiste Society, and of the American Association of the Relief of the Irish Republic.

Brother Madden had built up during his years at the bar a very extensive and varied practice. His early beginnings were slow and difficult, as has been said, but it could not long be denied that he possessed real ability, especially as an advocate. He possessed many of the attributes of a great jury lawyer, among these being a distinguished presence, fine personality, a good speaking voice, deep sympathy with the case he was trying, and when at his best a very fine command of forceful, vigorous English. It would perhaps be too much to say that he had a profound knowledge of law, but he was a student in certain fields of his profession. His knowledge of criminal law and of the psychology of the offender was extensive. A glance at the bookcases in his library shows many volumes given over to scientific study of crime and the criminal, and among these works may be mentioned: Criminal Sociology by Enrico Ferri; Modern Theories of Criminality by DeQuiros; The Individualization of Punishment by Saleilles; Penal Philosophy by Tarde; and Crime, Its Causes and Remedies by Lombroso. He took a leading part in the trial of many important criminal

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cases. The writer knows of at least six capital cases where he was retained as senior counsel, and his success in this class of cases was very marked. I have often listened with real delight to his arguments in his cases, and I believe it is agreed by all the attorneys of this county that when Joseph Madden was at his best, no member of this bar was near his equal in an argument. During the last two or three years of his life his practice became so extensive that he could not well look after the details of it, and his health was not of the best. His efforts during these years suffered in consequence, but even during this period, and especially before it, he was a very effective jury lawyer.

There are various standards whereby the life of a man may be judged, but any standard is imperfect which does not note the real distance the man has traveled from the morning to the sunset. It is not so much the actual position attained as the distance traveled and the progress made that tells the true story. Many men have undoubtedly attained higher rank in their profession than Brother Madden, but he is a conspicuous example of success in that the beginnings of his career were so humble. His parents were poor, and he had small opportunity for an education, but from this very humble beginning he made great progress and at the time of his death he was a leader among the lawyers of his city and of the state. Judged by either standard, the distance actually traveled or the height of success attained, Joseph Madden achieved real success, and the bar of Cheshire County and of New Hampshire feel keenly his loss.

His home life was exceptionally happy. He married in 1894 Eugenie Chalifour, who survives him. She is a member of a distinguished Canadian family and a lady of high culture and refinement. No one was more ready than Brother Madden himself to attribute much of his success to her precept and example, and no one was more delighted than she to know of the success which he attained. The sympathy of the entire bar of the state is extended to her in the loss of her distinguished husband.

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HOSEA W. PARKER.

BY IRA G. COLBY OF CLAREMONT.

Hosea W. Parker died August 21, 1922, at his home in Claremont, New Hampshire, after an illness of ten weeks. He had passed his eighty-ninth birthday, and up to the time of his last illness had been regularly at his office. He was born in Lempster, New Hampshire, May 3, 1833, the son of Benjamin and Olive (Nichols) Parker. He was the youngest of three children, the eldest brother, Hiram Parker alone surviving.

Mr. Parker's education was at Tubbs Union Academy, Washington, New Hampshire, the Green Mountain Institute, Woodstock, Vermont, where Dr. John S. Lee was principal, and Tufts College. He studied law with Edmund Burke, Newport, New Hampshire, and was admitted to the New Hampshire Bar in 1859. He was sent to the State Legislature from Lempster, 1859–60, and then he settled in Claremont, which was his home throughout his life. He was a Democrat in politics, and was a member of the National House of Representatives from 1871 to 1875, being one of the few Democrats sent from New Hampshire to Washington. While in Washington he was a member of many important committees and was largely responsible for the refusal of patent extensions resulting in the overthrow of the sewing-machine monopoly. He was the oldest surviving member of the Forty-Second and Forty-Third Congresses.

Next to the law his chief interest was his church. He was a lifelong Universalist, and during his whole residence in Claremont he was a leading member of the Universalist Church.

He had been superintendent of the Sunday school for

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over sixty years. He had been president of the New Hampshire Universalist Sunday School Association, and for the past twelve years president of the State Convention. He was twice president of the General Convention, and was always devoted to its theological and practical programs of progress. For many years he was a trustee of Tufts College, and president of the board. From Tufts he received the honorary degree of A. M. in 1883 and of LL. D. in 1913.

He was always active in the affairs of the town, being moderator of the school district for thirty-seven consecutive years and auditor of the town for fifty-one years. He had a part in all the leading enterprises of the town and had been its counsel for nearly fifty years. He was called by the people "the grand old man of the town," and could always be depended upon to help any good enterprise. On account of his unusual ability as a presiding officer, he was often called upon for public events. He was associated in several of the business enterprises of the town, and at the time of his death was president of the People's National Bank and also of the Woodsum Steamboat Company of Lake Sunapee.

He was strongly interested in Masonry. He had held all the chairs in the local bodies and was for twenty-one years Eminent Commander of Sullivan Commandery Knights Templars.

The editorial of the Claremont *Daily Eagle* said of him:

"Local patriotism was strong in him. He spent little time in mere talk, but he was prodigal of time and fertile of brain and untiring in labor when it was a question of Claremont's betterment. And his methods brought success. In March meetings he could lead in a laugh, or stir men's deepest feelings; he could condemn what seemed to him extravagance, and he could chide a house full of voters for failing to do their whole duty. Leader of a political minority, he had his full share of political victory. He could sway a jury, and he could conduct a Sunday school. Power over men's acts and judgment he had, the magnetism that springs from manly courage and honest conviction, and he used it wisely.

"There are many, far from Claremont, who will learn of his death with regret and who will ably appraise his services in the wider field of

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the state and nation. But here, at home, it is a neighborhood affair. Here, where he walked and talked with all, where his clean, useful years were passed, where he built his home and did his day's work, he is known and appraised with the keen intimacy of small communities. Here the realization is heavy upon us that a true friend has gone, a kindly voice is stilled, a source of wise and courageous counsel is at our service no more. He will sleep in that cemetery which he wished to have called 'Mountain View.' High or low, rich or poor, old or young, all miss him in sorrow. It may be said that 'he goeth to his long home and the mourners go about the streets.'"

Mr. Parker married in 1861 Caroline Louisa Southgate of Bridgewater, Vermont, whom he met at South Woodstock Academy. Mrs. Parker died in 1904. They had one child, Lizzie Southgate Parker, who married Lee S. McCollester, D. D., Dean of the Theological School of Tufts College, in 1889. They have two children, a son, Parker McCollester, Assistant General Solicitor of the New York Central Lines, residing in New York City, and a daughter, Catherine McCollester Gallaher of New York City.

The last services were held in the Universalist Church of Claremont. The active bearers were Past Eminent Commanders of Sullivan Commandery, Knights Templars. Prominent members of the local and state bar, the Chief Justice of the Supreme Court and members of many business organizations and of the church formed a long line of honorary pall bearers. The stores of the town were closed during the funeral service and everywhere were expressions that a man had greatly blessed his community and age by his deeds, his faith, and his personality.

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FRANK SHERWIN STREETER.

BY FRANK N. PARSONS OF FRANKLIN.

"Streeter, Frank Sherwin, lawyer; born East Charleston, Vt., Aug. 5, 1853; son of Daniel and Julia (Wheeler) Streeter; A. B., Dartmouth, 1874 (LL. D., 1913); married Lillian Carpenter of Bath, N. H., Nov. 14, 1877. Admitted to bar, 1877; member N. H. House of Representatives, 1885; president N. H. Constitutional Convention, 1902; president Republican State Convention, 1892; delegate-at-large Republican National Convention, 1896; member Republican National Committee, 1904–8. Director Manchester Traction Co., etc. Member American Section International Joint Commission (created by treaty with Great Britain for settlement of water boundary questions between United States and Canada), March 16, 1911–Oct. 1, 1913. Trustee Dartmouth College since 1892. Member N. H. Historical Society (president, 1914–5), American Historical Association, N. H. Bar Association (president, 1903–4), American Bar Association; delegate Universal Congress Lawyers and Jurists, St. Louis, 1904; member sub-executive committee for Celebration 100th Anniversary of Peace Among English-Speaking Peoples, 1913; member executive committee League to Enforce Peace, 1915; chairman N. H. Belgian Relief Committee, 1915; executive committee National Security League; president New Hampshire Defense League, 1917; Chairman State Board of Education, 1919–21. Unitarian. *Clubs:* Metropolitan, Cosmos (Washington); Union, Algonquin, Boston City (Boston); Wonolancet (president, 1905–21), Snowshoe (Concord); Derryfield (Manchester, N. H.). Home, Concord, N. H."

The foregoing sketch, the source of which will readily be recognized, may fairly be called autobiographic because it would not have been printed without the subject's approval. It needs but a line to complete, "Died at Concord, December 11, 1922."

Although but a skeleton, in it we read clearly, without the aid of imagination or logical inference, the record of a successful career. I am not sure that as his record to be enrolled in the archives of this Association, Streeter would not prefer this account should stand as it is—unelaborated

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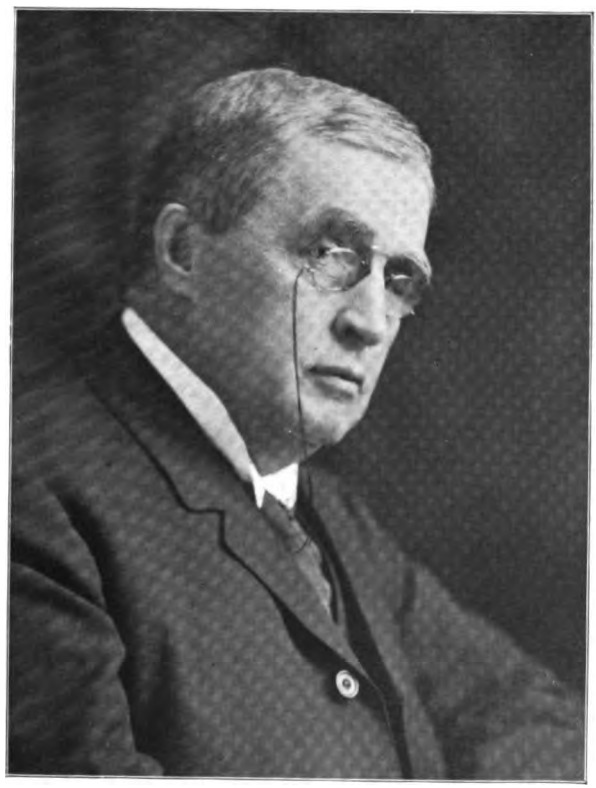

FRANK S. STREETER

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and unexplained. It is for our advantage rather than to benefit his memory that we take some thought as to the grounds of this success.

After graduating from St. Johnsbury Academy in 1870 Streeter in deference to the religious sympathies of his parents entered Bates College in Maine. A year later he joined in its sophomore year the class graduating from Dartmouth in 1874. I made his acquaintance in college, but after graduating I lost sight of him until, upon my admission to the Merrimack Bar in March, 1879, I found him at Concord actively engaged in the practice of our profession. In the meantime, after a year devoted to the profession of pedagogy, then common first-aid practice for Dartmouth graduates, he had spent two years in the study of law in the office of A. P. Carpenter at Bath and been admitted to the bar at Haverhill in March, 1877. Carpenter, as I have often heard him say, had a theory that the best plan for a young lawyer immediately after his admission was to set up his office in some place where business would not immediately intrude upon time which could more profitably be devoted to study. He apparently believed in the principle of the mouse-trap story attributed to Emerson, that if in time the young lawyer acquired knowledge which the world needed, the world would beat a path to his door. Possibly because of advice from his preceptor, who about this time became his father-in-law, Streeter opened an office in Orford. His stay there was brief. It may be inferred from his subsequent career that he concluded that the way to get business was not to wait for it, but to go where business was,—at least to meet the world half way. Hence the removal to Concord. Here he was for a time in partnership with John H. Albin.

In 1879 Streeter formed a partnership with William M. Chase, upon the dissolution of the firm of Sargent & Chase by the retirement from practice of Chase's senior partner, Judge Sargent. Sargent had been Chief Justice of the Supreme Judicial Court until the overturn of the judiciary

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in 1874. The firm had a good, conservative business to which the new firm of Chase & Streeter succeeded, but new business soon rolled in to an extent never dreamed of by the senior partner. Streeter was now well settled in his profession. His skill in making new acquaintances and his ability in impressing prospective clients with the earnestness with which he identified himself with their cause brought many new ones. The firm was counsel for the Concord Railroad in the great struggle of the '80's and early '90's between that road and the Boston and Maine for railroad supremacy in the state, a contest which was carried on as well at the polls and in the legislative halls as in the courts.

Streeter was not a lawyer learned in the minutive of the books as was his father-in-law, Chief Justice Carpenter: the law interested him as a practical tool for solving his clients' problems rather than as an abstract science. He argued many cases to the jury, mainly for corporation defendants, for whom in that period a jury's verdict was never expected and rarely obtained; but while a good trial lawyer, his bent was for rational rather than emotional appeal, and he lacked the personal magnetism which marks the highly successful jury advocate. His type of mind was better adapted to legal argument. He was well grounded in fundamental principles and his arguments therefrom were clear and logical; he could adopt and skillfully use material others had collected for him from the books. He never, I think, attempted a legal argument without full and careful preparation. No one, I think, ever called him a jury lawyer, but he was often in his later life spoken of as the leader of the bar of the state. Ability to argue fairly well to the jury and very well to the court does not explain this man's success. This success came to him largely from his perception of the changed demand made upon the lawyer at the time he came to the bar, a demand which he had peculiar ability to satisfy. His own theory of the burden of the lawyer of to-day he made the subject of his address as president of this Association in 1903. After describing

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in detail changes in methods of business in the preceding twenty years, he said:

"It is plain that the general equipment of the successful modern lawyer is widely different from that required a generation ago. By the term 'successful,' as here used, is not meant the mere capacity to make money. The successful lawyer is one whose integrity, high character, and general ability in all branches of his profession command the respect and confidence of the community. A lawyer may have the capacity to make money and at the same time be a most tremendous failure in the broadest sense of the term. . . .

"It is true that the old-fashioned type of eminent lawyers is passing away. The places of that class of lawyers, of whom Judge Perley was perhaps the chief exemplar, are not being filled to-day. They had profound knowledge of the law as it was stated in the books; they were ready with apt quotations from Coke and the Yearbooks; they knew the law as a science; they studied legal principles in the abstract; they were men of immense learning; their legal logic was stern and relentless; their reasoning powers were highly developed; they were the great lawyers of their time. . . .

"But it is plain that the demands made upon the profession to-day are larger and more exacting than those of their day. They were consulted in important matters because of their knowledge of law. The advice of the modern lawyer is sought because of his knowledge of business as well as the law. A thorough knowledge of legal principles and a high degree of legal training are just as essential to the active lawyer of to-day as to his predecessors. He requires all their knowledge of the law, but, in addition to that, he requires the knowledge of business which they did not possess, and if he has not that training and capacity which will enable him practically to apply his legal knowledge to the successful working out of practical business problems, his mere legal learning will be of little use to him or the world.

"Except in rare cases, the modern business man does not consult a lawyer because he has a diploma from this college or that university, or a certificate of study from this office or that law school, or has a reputation solely for profound legal learning or capacity to cite precedents, but because he thinks the lawyer has an all-round capacity to analyze his particular business trouble and best steer him into a port of safety. The knowledge required of the lawyer in that case may appear to be wholly on the business side, but he must also have such knowledge of the law that in working out the business problem he will not steer his clients into legal difficulties. The responsibility now resting upon the active lawyer is far greater than that assumed by the great lawyers of whom we have spoken. He must have a combined knowledge of law

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and business, so great that he may successfully keep his client out of litigation in most cases and, if that is impracticable, to conduct the litigation to a successful result."

This conception of the work of the modern lawyer implies knowledge of much beside law,—knowledge of men, of affairs, of history past and present. Streeter was an omnivorous reader of other than law books. Since his death, I have had the privilege of examining his memoranda of some over fifty addresses on widely differing subjects which he gave at different times, nearly all carefully prepared, all carefully indexed and preserved. Elaborate addresses on Cecil Rhodes, Gladstone, The Union of the German Empire (long before the war of course), indicate the extent and variety of his studies. He was not a candidate for public office, and held but few. One held by him, omitted from the preceding autobiographic list, gave him a title which always remained. Governor Busiel offered him the position of Judge Advocate General on his staff. Though the office as then constituted must have been distasteful, he accepted the position and became "General" Streeter. The courtesy title had greater permanence than usually attends it, because it exactly fitted the man. He was a general, skilled in strategy and tactics. He had vision and diplomacy. He could plan and command for others to execute. The plan once made he had the force to carry it out over whatever obstacles stood in the way, ruthless perhaps at times of the consequences to others because of the importance, as it seemed to him, of the end aimed at. His position as counsel for one of the contestants in the great railroad controversy and his prominence in the councils of the dominant political party gave him an influence in state affairs wider than was generally known. So long as the result he aimed at could be brought about, he seemed to care little who had the credit for what was brought to pass.

Some years ago I had occasion to write of the debt the profession owed to Streeter's law partner, Judge Chase, for

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his great work on the statutes of the state. To Streeter we owe the present two-court system. There had been talk of a change for some time. In 1901 we were to have a lawyer for governor, and the moment seemed auspicious. The first obstacle appeared when Governor-elect Jordan came to Concord with a message opposing any change. Streeter got that out of the message. The bill for the change was introduced and was moving smoothly along when suddenly unexpected and strenuous opposition appeared. Most of the friends of the bill were inclined to withdraw rather than face this opposition, but Streeter, with his usual tenacity of purpose, insisted the bill was right and should be put through. It was, and has, I believe, operated to the satisfaction of everyone. It had one merit aside from the separation of the courts, whether such separation was wise or unwise. It placed the burden under which seven men were struggling upon the shoulders of ten.

Streeter's success was due as much, perhaps more, to his knowledge of affairs, of the demands of business, than to abstract knowledge of the law. He got and retained clients because he impressed them with the immensity of the force which he could and was ready to devote to their affairs.

In the words of a long-time partner, Streeter's "most marked characteristic was his utter devotion to any cause he undertook to serve, whether professional, civic or philanthropic. He made his clients feel that their cause was his own, and such it was. . . . Unusual talent, unbounded industry and intense loyalty were among the most marked characteristics of the man."

In 1891 Chase became a judge. Streeter, with his knowledge of men, and ability to be aided by their work, joined with him younger men and combined them all in such a law machine as had never before been seen in New Hampshire. With them he continued in active practice until a few years before his death. Then, yielding somewhat his intense devotion to paying clients, he devoted the same skill and diplomacy, energy and untiring industry to the

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public good. The war opened many avenues. The various positions he held in the work are stated in the skeleton sketch with which I started. Of his labor in this work I was not in a situation to know the details. I adopt as my own the following furnished me by one himself in that work: *

"General Streeter succeeded me as President of the New Hampshire Defense League early in 1916, and from that time on till our Executive Committee of the Committee on Public Safety got thoroughly organized was indefatigable in his work for military preparedness in New Hampshire. Nationally he was on the Executive Committee of the League to Enforce Peace of which Taft was President, and was also connected with the National Security League, and through his work the New Hampshire Defense League was made a branch of the latter. I think he was the greatest moving force we had in the campaign for 'preparedness' prior to the war—I mean our entrance into it. He was active in behalf of the Lumbermen's Unit and for the preliminary financing of the Committee on Public Safety. He did both. Of course he had help from Mr. Thurber and others, but the initiative was his own, and his personality and wide acquaintance gave prompt results. He acted quickly and successfully, and New Hampshire, through his efficiency, was the first to finance a Lumberman's Unit.

"To the general work of the Executive Committee he contributed much. His knowledge of affairs, sound judgment, broad acquaintance, quick action and willingness to work made him a very valuable member of that committee. He gave most freely of his time, his money, and all else he had. He never turned down a job that came to him, and never failed in what he undertook. No one Hooverized more religiously or gave his time and money more freely.

"So when it came time to tackle our longest, hardest and at the same time our most delicate job, the task of 'Americanization' in New Hampshire, logically and fortunately General Streeter was selected for the work. His circular letter of August 20, 1918, shows his plan, and Chapter 105, Laws of 1919, shows the legal requirements and machinery set up for the accomplishment of the desired purpose. Of course he had help, but for the plan, its execution, and subsequent development the credit is General Streeter's. And to my mind it is one of the best pieces of constructive work done in New Hampshire.

"I know of no other man in the state who could have got together in working order, as he did, the various religious denominations in the state, parochial and public schools, corporate interests and influence, and got everybody cheerfully behind sections 5 and 13 of the chapter.

*Hon. Clarence E. Carr.

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"To accomplish his object, he had to revolutionize the educational system of the state; but now 'in the instruction of children in all schools, including private schools, in reading, writing, spelling, arithmetic, grammar, geography, physiology, history, civil government, music and drawing, *the English language shall be used exclusively.*'

"It was a great job to do this, but a greater one to get all the diverse elements, religions, etc., to agree to it, and do it cheerfully and apparently with approval.

"Added to this was two years of faithful service without compensation for the public good.

"That was a patriotic job, and all of us have much for which to thank Frank Streeter."

Streeter's name first appears in the New Hampshire reports as counsel in a case decided in 1879, reported in the 58th volume, while the last case which he argued is reported in the 77th volume and was decided in 1915. Though he was actively interested in other cases in which his firm was engaged for some two years later, he did not himself address the court. The most noted litigation in which he was engaged arose from the controversy as to the mental competency of Mrs. Mary Baker Eddy, which continued after her death in the struggle over her estate. This controversy was carried on in the courts of Massachusetts as well as New Hampshire, and one branch of it invoked the jurisdiction of the Federal Courts.

His last public service was his investigation for the United States Government of the affairs of the Atlantic Corporation shipyards at Portsmouth, from which developed his appointment as special representative of the state of New Hampshire, serving, at his request, without salary, to assist in composing the differences between the Shipping Board and the shipyards company, and to secure the location of some new industry in the vast plant at Atlantic Heights. This task was uncompleted at his death.

What Streeter did for Dartmouth was his greatest public service. Elected a trustee in 1892, he remained actively on the board until his death, and was made a life trustee in 1897. Taking a large part in placing President Tucker at

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the head of the College in 1893, he was ever as a trustee and an alumnus zealous in every proposal to benefit the College and broaden its activities. His last general service was as chairman of the Memorial Field Committee, whose work did not reach completion until nearly a year after his death.

The *Dartmouth Alumni Magazine* for February, 1923, recounts in detail this service for the College. President Hopkins has given us an appreciation of that service with which he permits me to adorn the records of this Association.

Speaking at the funeral service in Concord, he said in part:

"For more than thirty years he gave to Dartmouth College a service of the finest consecration, a service whose value was beyond estimate, a service unselfish, a service willing always to bear responsibility, a service desirous of doing for that which he felt to be worth while the maximum which it lay within him to do. And the service which can be rendered by a trustee of a college is a service beyond compare in certain ways, in that it is a self-sacrificing service, in that it is a service which does for others without hope of recompense and without prospect of return. It is a cause which requires a constancy of attention and persistence of effort.

"When Mr. Streeter came to the trusteeship of Dartmouth College, it was a prospect uninviting. And I speak not only for myself in stating this, but I speak for three administrations. And I speak with the personal message of President Tucker, who wished me to express for him the sense of indebtedness and obligation which he has always felt, and who yesterday said to me that he found continuously in Mr. Streeter unplumbed depths of friendship and unclimbed heights of idealism which were not only beyond his own early conception of him but he believed beyond the conception of any man who knew him.

"And that which was true in 1893, when he came and lent his spirit of courage and force to the feeble institution, remained true for us who later had to do with the College and its administration, on the board of trustees, unto the very end. It took an imagination, a strength and a vision for a man to see in the half a dozen college buildings, crippled resources and insufficient student body in 1893, the possibilities of the College as they have opened in the years since. And it took not only an imagination and a vision, but it took a nervous energy such as probably no one outside of the board would have any reason to understand. If the time were another, and if there were a longer period in which to talk of these things, incident after incident of the last twenty years could be told indicating how complete his knowledge was of the

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service which might be rendered to the state and to the nation by making a college render its maximum service.

"I believe that great as was his love for the College, and great as was his love for the men who had to do with the College, it was fundamentally because of the service which he believed the College could render that he was willing and interested to commit himself to a degree that made it necessary for him to forego many other things which he might have done,—and to a degree which was incalculable in the amount of responsibility which he would accept.

"I speak not only for myself, I think, but I speak for each fellow of his on the board during this more than thirty years, when I say that the wealth and richness of the endowment which have come to the College through his interest and through his support are something which has enabled the College to make its service infinitely greater and to make its recompense to society very largely more complete for that opportunity which society has given to it."

Soon after Streeter became established in Concord, he bought what had been the residence of Judge Fowler, on North Main Street, which he rebuilt and added to from time to time to suit his wishes. The grounds, with Mrs. Streeter's aid, were adorned with shrubs and flowers, making one of the most notable gardens in the state. Here he and Mrs. Streeter dispensed generous and hearty hospitality.

Beside Mrs. Streeter he left two children, Julia, now Mrs. Henry Gardner of Baltimore, Md., and Thomas Winthrop, who, graduating from Dartmouth just thirty years after his father, followed his profession and adopted his ideals, and is now located in New York.

Much that could be said of Streeter's achievements as a force in the community has been passed over. To comment on all the text of the synopsis with which I started would make a volume. The facts are stated and the intelligent mind can read between the lines.

If this were to be a spoken tribute rather than a cold record in type, the temptation would be strong to add more of a personal note. My acquaintance with Streeter extended over fifty years,—intimate at times, though never closely so. At the bar we were associated in but few cases.

The bond of our acquaintance was our college connection,

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a bond the validity of which Streeter never questioned in the case of any man. He impressed me most with the strength and resourcefulness of his mind, with his absolute poise which no disaster, however serious or unexpected, could disturb. He was fond of intellectual companionship and unswervingly loyal to his friends, but he also made enemies because of the strength of his mind and force of his character. "The man who makes character makes foes." There was a very real element of warmth and affection in his make-up, but it was rarely revealed except to his few intimates, and in his professional and business life he was apt to be severe and ruthless, not to conceal sentimentality, but because such was the path to success. His skill in diplomacy was great, although, of course, his imagination did not always disclose to him in advance all the pitfalls in the path. To state in one sentence my estimate of him, I should say, he was cast in a larger mould than his immediate contemporaries. He had not the personal magnetism which leads to success in the pursuit of elective office. If he could have planned as well for himself as for others, which he does not seem to have attempted to do in the pursuit of office, he had the breadth of mind and the wealth of information which would have made him a real national figure.

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DAVID TAGGART

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DAVID ARTHUR TAGGART.

BY JOHN R. McLANE OF MANCHESTER.

David Arthur Taggart was born in Goffstown, January 30, 1858, the son of David Morrill and Esther Wilson Taggart. He was educated in the public schools in Goffstown, the Manchester High School, and Harvard College, from which he was graduated in the class of 1878 at the age of twenty. His scholastic career was a notable one and, with a long cherished ambition to engage in the practice of the law, he entered the office of Judge David Cross in Manchester as a law student, where he prepared himself for the bar examinations, which he passed, and was admitted to practice in 1881. The Law School course was the exception, study in the office of an active successful practitioner was the rule in those days, and the office of Judge Cross was the nursery of many students who later achieved great distinction in the profession. In those years Sherman Whipple, Esq., of the Boston Bar, and former Attorney-General James P. Tuttle, who was later for many years his law partner, were fellow students. It may well be doubted whether a better foundation for practice in this state could anywhere have been obtained. The case law which was being developed by the decisions of Judges Doe, Clark, and Carpenter on the bench, the trial of local cases in which Charles R. Morrison, Elijah M. Topliff, James F. Briggs, Cyrus A. Sulloway and Charles H. Burns were engaged, all tended to stimulate one like Mr. Taggart, who was naturally an enthusiastic student. He proved himself an apt pupil and before he was thirty years old he had won for himself a reputation as an advocate of great ability and as a counsellor of sound judgment. As the years went on his reputation grew and his jury arguments became notable occasions at Hillsborough County terms of court. He always tried jury cases with an associate. He seldom examined wit-

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nesses. He argued few cases before the Supreme Court. He was always the guiding hand in the careful preparation of his cases and he never went into court without the most thorough preparation both with respect to the law and the facts of his case. In the trial of the case he specialized in the argument to the jury and in this field he was without a superior. He had the rare quality of being able to confine his argument strictly to the evidence in the case, applying the closest logical reasoning to the evidence while taking legitimate advantage of the possibilities of humor, pathos, sarcasm and invective. Those who remember his arguments in cases like *Sanders* v. *Boston and Maine Railroad*, *Bachman* v. *Travelers Insurance Company*, in the later years of his practice, and *State* v. *Lemay* and *State* v. *Hoitt*, in the earlier years, will always regard them as models of jury advocacy. He never had a verdict set aside on the ground of prejudicial argument, but many a close case was won for his client by the logic and force of his summing up.

He had the wholesome respect and confidence of both bench and bar. In 1894 he was appointed receiver of the Granite State Provident Association, and wound up in the most successful way the complicated financial affairs of that institution. He was appointed by the Supreme Court a member of the Board of Bar Examiners in 1916 and served faithfully in this capacity until his death. He gave the greatest care and thought in setting examinations which should provide a fair test of the knowledge of the candidates and he read the examination papers again and again to deal fairly in every case. He was many times honored by his fellow members of the bar and at the time of his death he was serving as president of the New Hampshire Bar Association.

He was associated at various times in partnership with many men, including Judge David Cross, Elijah M. Topliff, Judge George H. Bingham, William H. Drury, former Attorney-General James P. Tuttle, Sherman E. Burroughs, David Dickinson, Louis E. Wyman, William J. Starr and John R. McLane. From 1890 he was the senior

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member in the succeeding partnerships of which he was a member and his leadership was recognized, his judgment respected and his relations with his partners were marked by a sympathetic and helpful interest which made the association in all ways delightful. The writer of this memoir will always hold in grateful memory the encouragement and consideration which he always showed toward the youngest of his associates. He did not preach legal ethics, but the example of his devotion to the interests of his client and his wholesome scorn of low standards of life or practice were worth more than any sermon.

In his earlier years he was very active in the affairs of the Republican party. He represented Goffstown in the Legislature in 1883 and was president of the Senate in 1889 at the age of thirty-one. In 1890 he was the Republican candidate for Congress from the First District, but he was defeated in a surprising election by Rev. Luther McKinney. This disappointment ended his active political career and undoubtedly influenced him to give his undivided attention to his law practice. His interest in public questions never waned and he took the greatest pleasure in discussion with his friends, but his distaste for politicians and their practices grew with the years.

He married November 11, 1884, Mary Elbra Story, daughter of Dr. A. B. Story of Manchester, who survives him, together with two daughters, Mrs. Esther R. Cooper and Mrs. Ruth C. Whipple, both of Boston. His home life was singularly wholesome and delightful. He was widely read in all branches of literature and keenly interested in current affairs. In later years he and Mrs. Taggart had spent a considerable part of each year in travel, and all these things contributed to an unusual charm of conversation which his many friends were privileged to enjoy. He died February 9, 1922, after a short illness, having lived a life honorable in all its relations, a credit to his profession, useful to his generation, and a precious memory to his family, and a valuable heritage to his children and his children's children.

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APPENDIX.

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REVIEW OF THE WORK OF THE 1923 SESSION OF THE NEW HAMPSHIRE GENERAL COURT.

BY H. K. DAVISON OF WOODSVILLE.

In response to a recent request of the president of this Association, I have prepared this report endeavoring to include here the chief matters of interest to our profession in the recent legislative session. One of the expressed objects of this Association is "to *devote* itself to the cause of good government." Because of certain recent demonstrations it seems that there never was a time when real earnest *devotion* to this cause could be more warranted and welcomed than now.

The legislature of 1923 convened on January 2nd and adjourned on May 4th (of the same year). In *one* way this summarizes most briefly the activity of the recent session. Though unusually long and though many important bills of vital interest to the welfare of the state were introduced only to be later killed in the political maelstrom, the recent session will be longest remembered not for its positive accomplishments, but for those of a negative nature, for its distinct adherence to that famous French motto—"They shall not pass." As an indication of their unusual briefness, one facetious person has suggested that all the *laws of 1923* could be printed around a picture of the State House and circulated in post-card form.

In 1917 there were twenty-seven lawyers in the legislature; in 1919 this number was reduced to thirteen and in 1921 further reduced to twelve. It was regretted recently by this Association that the tendency should be for fewer members of the legal profession to seek election to the legislature. On this program this organization has, consciously or otherwise, done good work, for the session of

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1923 included in its membership *thirty-two* lawyers and, for good measure, had a governor and two councillors who were members of the legal profession. If conclusions can safely be drawn from numbers, there is either a decided growing interest among members of this profession to attend the legislature or a growing confidence among voters in members of this profession, either of which should be a matter of pride and satisfaction to this Association.

With the precedent established in 1921 of naming state highways by special act of the legislature, an entire new field has been opened to legislators who seek immortal fame by sponsoring a new law. At the recent session the "west-side road" was named the "Dartmouth College Road," which action I am sure will receive the hearty approval of this Association. Several similar bills of much less merit were introduced and killed. It would appear that future sessions may be deluged with proposals to substitute historic or prehistoric names for the present names of our thoroughfares.

The legislature of 1921 created six different recess commissions. Each reported to the recent session, but no report was enacted into law. Guided by this experience only one recess commission was authorized this year, one to investigate the need and cost of erecting a State Pier at Portsmouth.

Taxation was the chief cause of *contention* or *detention* (depending on point of view) at the last session. It would be impossible without imposing upon your time to even outline the various tax measures proposed. Among those which failed were the proposal to abolish the woman's poll tax, to lower all poll taxes, to abolish the savings bank tax, to exempt various properties from taxation, and one to make the state an heir of all estates over $50,000. Tax measures which passed include the new inheritance tax of 2 per cent for direct heirs, 6 per cent for collateral heirs, and 10 per cent for others, to replace the former held unconstitutional by our Supreme Court, a uniform tax on the

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income from stocks and bonds, a new tax on national banks to comply with the recent decision of the United States Supreme Court, and a gasolene tax *legally known* and recognized as a *Road Toll*, which becomes operative July 1, 1923, at one cent per gallon for the rest of this year, and two cents per gallon after January 1, 1924, with a reduction in auto registration fees. The railroad tax distribution was changed. Chapter 55, Section 11 of Public Statutes was *repealed* which permitted towns to exempt from taxation manufacturing establishments for not more than ten years. This was the result of a growing public disfavor toward exemptions of all sorts.

Many uniform laws were introduced, but the Uniform Sales act was the only one enacted into law. It is nearly as long as all the rest of the legislation passed at the 1923 session combined. Professor Samuel Williston of the Harvard Law School and author of the Uniform Act appeared before the House Judiciary Committee, at its request and explained the distinct advantages of this act. The only change I recall in existing law is that the $33\frac{1}{3}$ *limit* was raised to $500 (not in poker games), but for transactions which are enforceable under the statute of frauds, though not in writing. It is simply a fine codification of the law of Sales and will be very useful for quick reference.

Probate practice was again refused to banks and trust companies of this state. It seemed conclusive that there was no real demand for such legislation. The opposition to this extension of probate practice was not based upon any desire to give the legal profession protection nor upon any desire to limit the banks in their legitimate business, but wholly upon the theory that a real fiduciary relationship, such as the one anticipated by a will, is founded usually upon one's confidence in individual officials of a bank rather than in the bank as an institution. These individuals may now be appointed and frequently are so named as executors and appointed as administrators. If the institution were named executor and then new officers were elected

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about the time of the testator's death, his worst enemy might become his executor as the bank's agent. The existing law seemed more sound in leaving all power of *substitution* to the court.

Among the old familiar bills which die biennially at Concord and continued the custom in this last session, were the various licensing bills for auctioneers, plumbers and electrical workers, all bills for revision of the Sunday laws, the repeal of the Primary law, the 48-hour work-week, the repeal of most of the existing commissions in the state, and the various home-rule bills.

Among the bills which failed to pass was a long bill to establish an industrial court in this state similar to the court now in operation in the state of Kansas. The bill had but few supporters, but they were very ardent. The experience in the state of Kansas where the only similar court is already in existence seemed to be the best argument against it.

Another bill which was well advertised and lobbied was the one to license real estate dealers and create a real estate commission. This bill failed to pass after many hearings and a storm of protest against it.

Among the *new* and *freak* proposals which failed to receive the serious consideration of a majority were: the eight-hour sleep bill, the Klu Klux Klan bill, the famous wall-paper bill, a bill to stock certain lakes with lobster, and one to create an inspector of apiaries.

The belated and much-needed revision of our Public Statutes *was* authorized. This bill has been killed in many previous sessions. The need of its passage was emphatically indicated in Brother Rogers' report in 1921. Much credit for this action is due our fraternity and the unselfish action of its individual members who worked throughout the recent session in support of this bill. Such an accomplishment fully justifies the continuance of a legislative review at our annual meeting following each session, and it is hoped that some suggestion here may be so worth while as to receive the support of this membership and be enacted into law two

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years hence. The commission to make this revision has been recently appointed. I feel that the governor and his council deserve high praise for the fine selection made.

The Usury law which was repealed two *years* ago presented a peculiar situation to the recent legislature. There was much *interest* in the bill. It will be remembered with what gusto certain classes of citizens attacked the change when made in 1921 as a vicious piece of legislation. There were even attempts made in the closing hours of that session to repeal the bill previously passed in the same session with little opposition. After the time limit had passed for the House to forward new bills to the Senate, it came to the attention of certain party leaders that the repeal of the existing law was a party pledge to be regarded, perhaps, as a *mandate* from the people. This subject was therefore called up in the closing hours of the session, vigorously debated, and passed through the House in spite of any real public demand for this change. The Senate disregarded the bill, however, and the existing law remained unchanged. If the experience of the two past sessions is to be continued, a consideration by the House of changes in the Usury law may be accepted in the future as a very hopeful indication that the New Hampshire Legislature is again about to adjourn.

Another law of 1921 which run the gamut during the recent session was the law electing selectmen for a three-year term. It was proposed to change back to the one-year term, a proposal which at first seemed to have but very little support. Near the end of the session this change was *recommended* by the House, but failed to pass in the Senate.

It is interesting to note that there were six special acts to change names which passed the last legislature, and which changed the name of a highway, a man, a pond, a hospital, a preparatory school, and a college in this state. I have made previous reference to the highway bill and would only make mention here of the fact that the state college is now officially and legally known as the "*University of New Hampshire.*"

But one bill which received the approval of both Houses

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failed to become law by reason of the governor's power of veto. This was the bill raising by bond issue $225,000 for the purpose of building a new dormitory at the Keene Normal School.

An explanation of the new daylight savings bill may be interesting. A bill was introduced to modify Chapter 15 of the Laws of 1921 which aimed to insure the benefits of standard time to the citizens of the state. The Public Service Commission showed that the 1921 law in no way affected interstate trains, but that it was effective in the case of intrastate trains with the result that the branch lines were obliged to miss many main-line connections by an hour, much to the discomfiture of the traveling public. The Public Service Commission did not feel that it had authority under the act even upon petition by users of the branch lines to permit any change in their time schedule. It appeared to the Judiciary Committee that since interstate trains could not be regulated by this law and since the effective regulation of intrastate trains was so unsatisfactory, the law itself should be repealed. This was done, and in its place an act was passed subjecting to a fine not exceeding $500 any city or town establishing within its limits any other than standard time. Thus far there have been no cities or towns which have felt they could get their money's worth from the change, and the law appears to be effective.

A stringent law was passed for the protection of the public to regulate the supply of coal within the state. A new act relating to trespass on improved lands was adopted. The cost of permits for registration of cars over five years old was quite properly reduced. A bill known as the "Medical Subsidy Bill" passed to assist towns which are without services of a resident physician to secure the same. Two towns have already taken advantage of this act.

There were 14 bills passed making minor changes in the fish and game laws. At least three times this number of proposed changes were killed. The time spent on the floor

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of the House discussing such questions as the six-inch trout bill was all out of proportion to their importance and so extensive as to materially lengthen the session.

Another bill which failed to pass in the recent session in which this Association was undoubtedly interested, was the proposal to create two new judges in the Superior Court. It seemed clear that Hillsboro County needed some relief, as their docket was overcrowded; on the other hand, it appeared that the bulk of the cases there were being handled by a few firms who would be unable to present their cases more rapidly if the number of judges was increased.

That delay in courts is not a problem peculiar to New Hampshire is evidenced by the remarks of Chief Justice William Howard Taft of the United States Supreme Court, in his very recent address in Boston before the Bar Association. He said: "The public blames the courts and the members of the bar for delay, when the latter are powerless in the face of the law as it now stands. The remedy lies with the people, but they must have proper leadership. Legal legislation will very confidently be left with leaders of the legal profession, and for this reason leaders of the bar should stand for election." Our procedure should be speeded up for the benefit of the public, and in New Hampshire I believe the Bar Association should be the willing servant of the public, to conduct an investigation of the present situation and then make some constructive recommendations for the legislature of 1925 to consider.

At the last session 409 House Bills, 71 Joint Resolutions, 41 Senate Bills, and 6 Senate Resolutions were introduced, of which number 232 were approved by the governor. This means that approximately only two out of every 5 bills introduced became law at the last session. Twenty of the bills passed were to legalize town or district meetings. This is an unusually small number of such bills, perhaps indicating more efficient town officers than in the past. There were 39 Joint Resolutions passed which appropriated the money for the next two years. It need only be said, in

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passing, that these were deserving propositions, as never was a New Hampshire legislature more reluctant to spend money than the last one.

There were also approximately 120 private acts and bills of minor importance which passed the last session to which I have thus far made no reference. In general they were bills to authorize or legalize various bond issues, bills making minor changes and amendments in charters of cities and fraternal organizations, salary bills, acts of incorporation, special acts of only local importance, and the routine bills such as the apportionment of taxes.

I recommend that this Association take an active part in trying at the next Constitutional Convention to draw up a satisfactory amendment to our constitution to reduce the size of the House and then actively support it when it comes up before the people in referendum. Four hundred and twenty one members of the House is not only absurd but absolutely unnecessary. From the time Congressman Rogers and I sat together around this campus ten years ago, I have always hoped to see this done, and I believe it should be in our program for future legislation.

In view of our recent experience it is highly desirable that this Association appoint a legislative committee to suggest ways in which our legislative session may be shortened. Bills should be introduced more promptly at the opening of the session. The legislature should work more hours per day and more days per week. The present situation is grossly unfair to the men from the north country. If the size of the House were cut, the session shortened by intensified work, and an increased salary paid to the members of the general court, New Hampshire would be making one of the greatest steps forward in *Good Government* it has made since it adopted its constitution one hundred and thirty-nine years ago. It would be for economy and for the best interests of the state. This Association might *champion* such a program if it saw fit to do so.

Among the bills which I have not already mentioned as

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having been adopted at the last session was one to permit a minor, if married, to make a will; another which changed the marriage law by raising the age of consent; another amended the advertising required for the foreclosure of power-of-sale mortgages; another lengthened the time for taking court action in bastardy cases. The workmen's compensation law was amended in several respects by hasty and perhaps unwise legislation at the very close of the session. A new and very strict regulation of the sale of all revolvers was passed. The law relating to suits by administrators was slightly amended with respect to the distribution of damages recovered.

An act establishing a severe penalty for driving an automobile under the influence of liquor with a jail sentence which could not be suspended in cases of conviction was recommended by the House, but was amended by the Senate in the case of first offences. This was perhaps a wise compromise. But should the present law not work out effectively it may be well two years hence to adopt the recommendation made by the House. Those of us who are frequent users of the highways recognize the need of some legislation of this sort. To be effective the penalty for this offence must be made so serious that it will be a real deterrent.

The burden of proving contributory negligence in cases of injury to personal property was changed to the *defendant*. This seemed to be a more fair proposition and will make the rule uniform in all cases where contributory negligence is pleaded. A new law relating to passing of worthless checks was adopted. After some keen opposition the Moores' Falls Corporation was given the added authority that it requested to transmit its power up the banks of the river on pole lines to the city of Manchester. The law of the road was amended with regard to cars approaching an intersection. This new law requires that an operator watch only the road to his right, and provides further that the car approaching on the road at the right has the right of way.

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I would suggest that this Association recommend to the next legislature the following change in its rules; that at the end of the second reading of a bill the speaker should immediately refer it to the appropriate standing committee unprinted unless otherwise ordered by the House. All bills should be printed and distributed to members if *recommended favorably* by a committee. There are many reasons for this suggested change. First, it would mean a big economy to the state in its printing bill, since many long bills are introduced, the passage of which is hopeless, and the printing of which is an absolute waste. This useless printing causes much delay in the procedure of the House. At present many bills introduced are so poorly drawn that they have to be completely redrafted in the committee. The same bill is often introduced as a separate bill by two or more members. Many bills are also introduced carelessly suggesting changes in our public statutes when this change suggested has already been made at former sessions, or perhaps in the same session. That much needless printing is done *must* be admitted. It may be argued that important bills should be printed for distribution to the members as soon as they have had a second reading. To this I agree and suggest it be done under that much used motion to suspend the rules. It would seem more wise to print only such bills as have at least found some support before a committee, unless under a suspension of the rules, than to continue the present practice of printing everything until near the end of the session, and then under repeated orders of suspension to print practically nothing.

I hope that some of the suggestions here may be more heeded than those of the woman who died in London and was buried in the town of Epsom, England, on whose monument you may read to-day the following verse:

"Here I lie with my three daughters,
We died from drinking London waters;
Had we but stuck to Epsom Salts
We'd still be free from these cold vaults."

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In closing and by way of apology, since our session laws are not yet printed in any form, I have been obliged to prepare this report from memory with the kind assistance of Brother Theo Jewett, clerk of the House Committee on Judiciary, whose help I very gratefully acknowledge at this time. I hope our laws may be issued more promptly hereafter, as suggested by Congressman Rogers in his review of the 1921 session. I sincerely hope that this Association will actively sponsor some plan to achieve this result. It would do well to investigate the system used in Vermont, our sister state, and elsewhere, where the laws of general application are issued much more promptly after each session than our *pamphlet* laws. It is two months since our session adjourned, and we have no form of the 1923 laws available. If the *passage* of laws is necessary, the *prompt printing* of them should be provided, not only for our benefit but for that of the entire public.

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REPORT OF THE TREASURER, 1922–1923.

	Dr.		
Balance on hand at date of last annual meeting:			
Liberty Bonds,	$1,000.00		
Savings Bank Deposit,	700.00		
First National Bank Deposit,	335.09		
		$2,035.09	
Received for dues, 1921–22,		3.00	
Received for reinstatement fees,		6.00	
Received for dues for 1922–23 (270 memberships),		810.00	
Received for Bar Association reports,		39.00	
Received for half-tone plates,		6.00	
Received for interest:			
Liberty Bonds,	$42.50		
Savings Bank Deposit,	21.00		
		63.50	
			$2,962.59

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Cr.

This amount is accounted for as follows:			
Incidentals Annual Meeting, 1922,		$52.75	
Senator Pepper:			
Expenses paid by him,	$22.93		
Expenses paid for him,	29.86		
		52.79	
Current expenses:			
Stamped envelopes, circulars, notices, postage, and express, etc.,		57.53	
Stenographic services,		3.00	
Flowers (deceased member),		15.00	
Safe deposit box,		2.00	
Half-tones,		19.50	
Bar Association Report,		449.50	
Secretary and Treasurer,		300.00	
			$952.07
First National Bank Deposit,			114.52
Savings Bank,			896.00
Liberty Bonds,			1,000.00
			$2,962.59

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OF THE

Bar Association of the State of New Hampshire

NEW SERIES, VOLUME FIVE *PART TWO*
(OLD SERIES *VOLUME TEN)*

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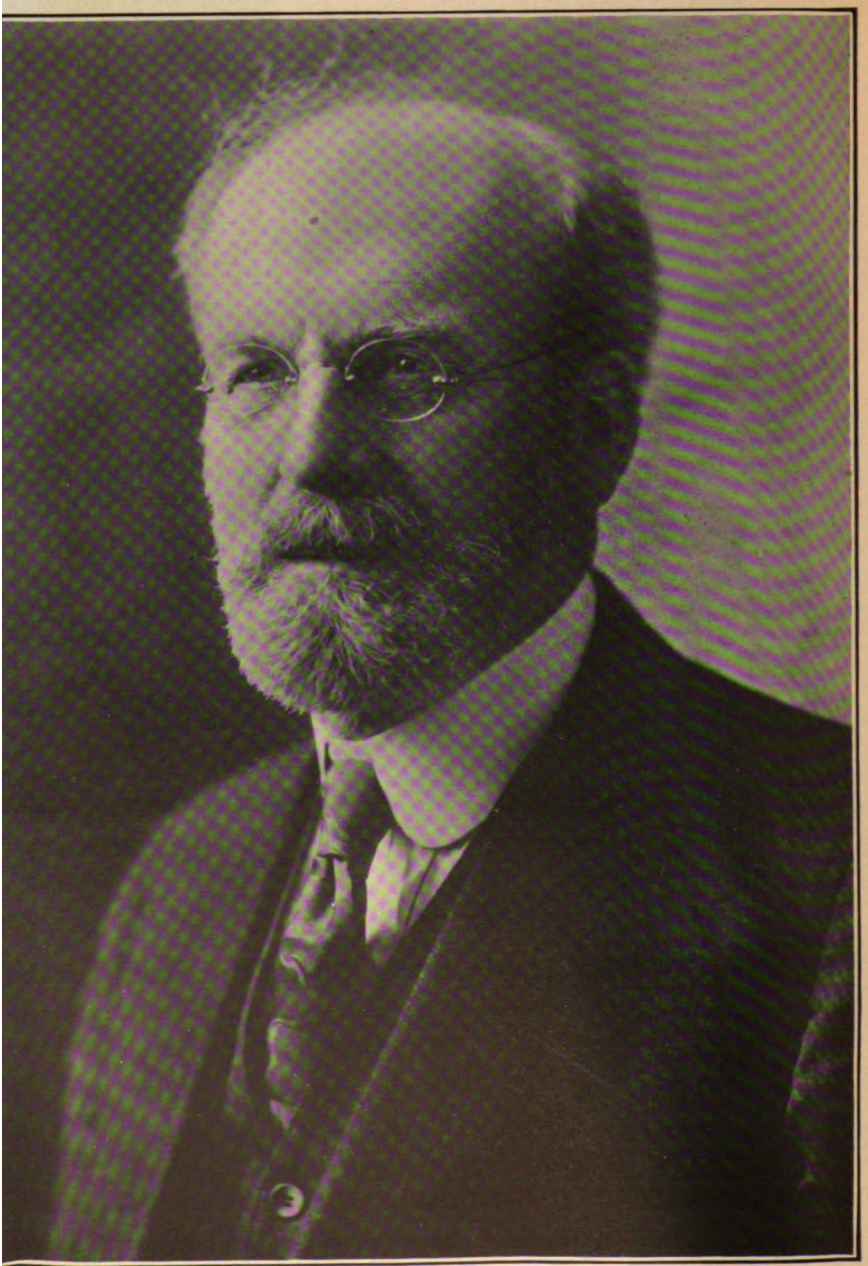

Hon. Robert J. Peaslee

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PRESIDENT'S ADDRESS.

COMMON LAW IN THE MAKING.

By Hon. Robert J. Peaslee.

It is the fashion to give a title to the president's observations and so the remarks on this occasion may be headed "Common Law in the Making".

In the discharge of my official duty to address you upon some subject worthy of your consideration, I am venturing to seek the enlistment of your interest in the common law as a development. In so doing I must be brief, for we have much of value to hear from others. And what I have to say will be primarily for the younger members of our profession. Not that it seems to me unworthy the consideration of the elders, but because of some always evident facts. Receptivity is not an attribute of age. Change of viewpoint is not welcome to those long accustomed to the familiar outlook. And the stripling of today is so soon to be the leader of thought and action, that we must make haste if we would in any way affect his attitude.

The visible and evident source of the common law is the law court. To some of you, perhaps, the law court merely signifies a group of lawyers who determine whether your client shall or shall not prevail in his contention. Sometimes, when you lose, you may feel that this is done without rhyme or reason—particularly without reason. And so you are asked to listen to a statement of the theories upon which legal conclusions are arrived at, with some consideration of the aid you can give in reaching those conclusions.

There has been a marked change in the expressed attitude toward the development of the common law, dating from about the beginning of the present century. In the nineteenth century the orthodox expressed view was that every

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present day common law decision rested upon written precedent. It was the quite common belief that if a lawyer was only diligent enough, if he sought patiently and explored widely, he would find some statement of the law, set down by some judge and printed in a book, that would apply to and settle the case in hand. During that period the great call was for precedent. Reason, experience and present day conditions were secondary matters. And so our great men of the law, at the bar, were then of the type of Charles R. Morrison, men who knew the books and read black letter tomes with relish, rather than those who had what may be called the statesman's outlook.

But with the new century, a different theory found more open expression. It was not a new theory, as we shall see later, but it was more openly acknowledged. The always evident fact that all our common law rules have been formulated by the saying so of some judge or court, that they each had official origin in human pronouncement, was more freely declared. There had been a curious reticence theretofore upon this question, especially upon the part of those somewhat timorous of change, or wary of responsibility. I recollect well one of my associates upon the old Supreme Court, back in the nineties, imparting to me in strict confidence that he had discovered that the common law is made and not found, and his earnest admonition that I be careful not to let the idea get abroad among the lawyers.

Homage was paid to the old view by our most distinguished Chief Justice, Charles Doe, although the results he arrived at plainly show that he did not believe in it. See how often his opinions are filled with citations alleged to show that his conclusions have always been the law. As Judge Jeremiah Smith said to us on a former occasion, those opinions were written largely for the purpose of convincing his associates—men who thought in the then conventional way, or worshippers of the Year Books, like Chief Justice Carpenter.

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Now all this is changed. The source of the law is not only known, but named and openly dealt with. This is not to say that precedents are dead. Far from it. They are still the guides that show the path of progress. They have that historic value that can never be ignored by those who proceed in the light of experience. But the present method of their use is different from the former one. It requires infinitely more study and more wisdom in application, if sound conclusions are to be reached. One knows that two and two are four because the book says so; but knowledge that the square of the hypothenuse equals the sum of those of the base and perpendicular, rests upon reason, and requires intelligent effort in acquisition and application. Precedent is not now necessarily a ruling despot, but rather a friendly adviser, whose counsel may or may not be controlling as it is found to prove its truth, justice and applicability.

The common law then is a development. It advances here and recedes there as the changing human conditions it meets are receptive to its wisdom of the past, or otherwise. It is not a bald new creation, set up from time to time. It grows in the only permanent way. Line upon line, precept upon precept, here a little and there a little.

It is your relation to this development to which your attention is invited. Remembering that the common law is not a dead thing, fixed and immovable, but a system that progresses as human needs demand, what sort of responsibility do you take for that progress?

It is a trite saying that a strong bar is always essential to an efficient court. When the bar is ignorant, or lazy, or too thoroughly commercialized to care for the science of the law, then inevitably the court falls into ruts, or goes forward with but uneven and illogical course. All this has been said many times, but it needs resaying now and then, and will need, so long as we are only human. If you leave

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the library down stairs to be a resort for dust and spiders, don't complain of the decisions of the court.

The tendency is for the young lawyer to seek more spectacular fields on which to earn his spurs. The approbation of the listening crowd at the jury trial, the newspaper headlines and the like, have their lure. They also have financial value. But there is a charm in the quieter work of the student that outlasts the period of youth's fiery ambition. There is a satisfaction in having helped to dispose of some supposed common law bogey that was fabled to stand in the path of progress, that has its appeal for any who delight in reason. And so I urge you young men not to neglect the development of the law, nor the development of yourselves as the prophets of what the declared law ought to be.

It is not every case, nor the usual case, that will present great opportunities along these lines. The common law has deep foundations in reason, justice, and experience and the great body of its precepts are of an unchanging nature. It is only here and there that changes come. But these are the points where differences of opinion will most surely result in litigation. And so, while your usual case will safely rest upon precedent, rightly understood and applied, the occasional case, the case that merits your best efforts, is that which involves the progress of the law.

Your function as molders of the common law is chiefly exercised in the presentation of litigated questions before the law courts. Do not fail this duty. If your question is worth transferring, it is worth talking about, even though briefly. And this leads me to digress and say a word as to methods of argument. It ought to be something more than a mere reading of your printed brief. Your brief is your text and your oral argument a preachment therefrom. It includes precedent, history, logic and now and then a bit of prophecy. Remember that no common law rule is supposed to outlive its usefulness. Of course your argument

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will not always carry the day, but you can at least give the court the benefit of your thought and reasoning upon the subject under consideration.

And your presence, and your argument, will do more than merely influence the case in hand. Every new contact gives one a variant point of view. And this is needed by men who live apart from the busy currents of life. How often it is said that the courts, particularly the law courts, do not realize the changes that are going on about them. The trial court has contact with the life of the people, especially through the institution of trial by jury. But the law court has no such access to the reservoirs of common thought and usual action. It is therefore of large importance to the healthy development of our common law that the bar should look upon oral argument of questions of law as being of equal importance at least with that of questions of fact. If, as Mr. Justice Holmes has said, experience rather than logic is the life of the common law, it is manifest that those who declare that law should have a broad knowledge of the life around them.

As there are ways and ways of presenting argument, so there are divers manners of receiving it. One way is to sit silently, and merely listen. That is not our way. Our custom is to suggest and to inquire, from time to time. The proceeding frequently takes the form of a consideration of the matter together, by court and counsel. It involves an exchange of views, rather than a one sided argumentation, where the advocate is kept in the dark as to how his logic is being received.

As a matter of course, questions are asked only for information, and suggestions are made in order that counsel may have opportunity to discuss view points other than his own. The object is not to display learning, nor to confound counsel. More light is wanted, and attention is called to the places where darkness seems to prevail.

Some of you, I doubt not, have been disturbed by this method of procedure. But surely it is better to know what

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is in the mind of the court while the matter is still fully open for discussion, and consideration, than to find out later that your case has been disposed of upon a ground you never thought of.

It is manifestly easier to prepare for an argument where one says his say without interruption, than to be ready to discuss the issues involved from shifting points of view. It is true that the latter calls for high ability and most thorough preparation. In this lies one of its great virtues. Lawyers, both on and off the bench, are prone to be lazy about their law work. Counsel often permit the press of the daily office grind to keep them from thorough preparation. Anything that tends to more diligence in this regard is not only for your own welfare, but in a very real way it stimulates the court to its best endeavors. A well argued case is likely to produce a more than usually well considered opinion.

Some lawyers welcome our method of conducting hearings, some cannot abide it at all. Two notable illustrations of these characteristics were found in two eminent Concord lawyers, now deceased, General Streeter and Judge Mitchell. With all his impetuosity and all his zeal for his cause, Streeter always welcomed questions or suggestions from the bench. Not that he was pleased to know that the court was thinking thoughts adverse to his theory—quite the contrary. But he kept himself so well in hand on these occasions, and was so keenly alive to the importance of knowing what he must answer to win, that he never had the appearance of wishing that the court would not interrupt him. If he had no answer to the proposition put to him, he made careful note of it, and later made reply by a supplemental brief. He at least had the satisfaction of knowing that he was not slaughtered from an ambush.

On the other hand, Judge Mitchell was always put out by any interruption. He was prepared to make his presentation of his views, and did not wish to have the effect

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marred. Often have I heard him say, in opening his argument, that he had prepared himself with care, and hoped he might be accorded the favor of uninterrupted speech, and that questions would be reserved until he had presented his views. He marched in the confident strength of his well ordered columns. In military affairs they say of such procedure: "It is magnificent, but it is not war."

This more or less Socratic method of ours is no new invention. It is as old as the common law courts. Turn to almost any early English law report, and see how full it is of this sort of thing. Questions by the court and answers by counsel occupy a substantial part of every volume. The fact that such matters are included in those often fragmentary reports, shows how important they were then thought to be. And they are important, for they show something of the detail by which results have been hammered out on the anvil of reason.

Such processes are of the very genius of the common law. It exists because it ought to exist, not merely because some one once declared it to be the law. Such a declaration, coming from an authoritative source is weighty evidence that there should be such a rule. But it is not conclusive. Demonstrate that it does not comport with our institutions, that the reasons which gave it life are dead, and the creature dies, since it has naught whereon to live. The feudal system was probably the most important branch of the property law of England, and common law rules as to property are held sacred beyond all others. But it scarcely required argument to show that the system formed no part of our law. It is easy to see that this should be so, because the change in institutions, thought and mode of life had been so great. But the same principle applies constantly. It does not depend upon political revolution, though it does depend upon revolution of thought and mode of life.

The limitations upon this process of growth of the common law are difficult to define. So are all the processes of

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growth and life. We cannot mark the moment when a bush becomes a tree, but there are plenty of unquestioned specimens of each. To some this theory of the vitality of any given rule of the common law seems revolutionary: and decisions following this line are not infrequently denounced as usurpations of legislative power. These critics fail to appreciate what has really happened. Remember that the common law is but the formal expression of the sense of the people. It has no permanent foundation save upon justice and reasonableness. It is the often inarticulate output of the public mind, seeking expression through those chosen to interpret the people's life. The common law is the index of what the people are. The statute declares what a majority order that the people shall be. A statute imposes a new rule of conduct. The common law expresses rules of conduct already existent by common consent. The common law grows because conditions are greater than theories.

Law courts are supposed to be, and no doubt usually are, far removed from the impetuous and temporary demands of those who seek a change. Such demands are but evidence that a change has taken place in the life of the people. They usually pass away in a brief time and leave life as it was before. It is only when they are founded upon real rather than fancied changes that they persist and grow in volume. And then it happens that the constant and consistent cry of the multitude makes itself heard in courts as well as in legislatures,—more remotely to be sure, but still very certainly, if it truly voices the abiding will and the life of the people. Even the most secluded harbor takes on a faint ripple from each upheaval of the open sea.

I said just now that this view of the changing nature of the common law is not a new idea. It is found enshrined in our constitution, which declares that the laws heretofore practiced upon shall continue, except as they are repugnant to the rights and liberties set down in that instrument. From the beginning, our court has understood this declara-

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tion to be a mandate to deny effect to any rule of English common law incompatible with our institutions. Eustis v Parker, 1 N. H. 278. This is not because the rule is English, but because it no longer belongs to us. It may have been developed here, and still it may become an outcast. When it is said that we did not adopt "any part of the common law incompatible with our institutions, or not adapted to our circumstances," Lisbon v Lyman, 49 N. H. 582, more is meant than a mere taking account of stock of the English common law as it stood in 1776. The idea involved has a broader application. It includes the rejection of obsolete rules that have originated in this country, as well as those promulgated in England.

It ought not to be necessary to say that this theory of rejecting the obsolete and building anew upon the old foundations has scant application in the administration of constitutional law. For the constitution is the Supreme Statute. Like all other statutes, it commands, where the common law advises. It is the direct mandate of the people, and is to be changed only by their direct and deliberately expressed will. It is not enough that most, or even all, of the people think that the constitution should be other than it is. The leash they have intentionally put upon themselves cannot be broken. It can be released, but only in the appointed way. Progress in constitutional law must be along the prescribed path. There is here little room for judicial interpretation of the life of the people, for in these fundamental matters the people have reserved that interpretation to themselves.

This is not to say that constitutional provisions are not to be interpreted and applied. But that interpretation is to be from the viewpoint of those who made the compact. The thought of the men of 1784 is what the constitution seeks to express. The different thought of a hundred and forty years later does not, and cannot, change the meaning of that instrument. If the frugal and plain ideas of that

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remote day are inapplicable to a time of extravagant and complex living, the remedy by way of change lies with the people alone. And that remedy is not to be had by the short cut of legislation.

The evident fact that the limits set by the constitution bind not only courts but legislatures as well, has not been taken as seriously as it should be by those responsible for the enactment of statutes. There has been a marked tendency to get over the border, to enact laws that run counter to the old interpretations of the constitution, apparently in the vain hope that public thought and public demand would influence courts upon constitutional questions, even as upon mere rules of the common law.

But quite aside from these questions of constitutional limitations, there has come upon us in the last generation a great flood of statutory changes in the common law. That is the modern tendency. Impatient of the slow and solid growth of the common law, exasperated, and sometimes justly so, by the failure of courts to understand and give effect to changes that have already become established in our social and economic fabric, resort is had to the law making power, because those whose function it is to declare the law are thought to have failed of their duty. And so the tendency has grown to look to the legislature rather than to the courts for the development of the law. This course has its stout champions, on as well as off the courts. They may be right, but my experience in the last year in attempting to deal with the three thousand pages of statute law enacted in this small state in the last thirty-four years, has not tended to decrease my regard for the common law.

Much of our modern statutes is to be commended, even though it increases the volume of static law more than a hundred fold. Such statutes deal with rapidly changing conditions that call for regulation or relief before they can be said to be sufficiently established to work changes in the common law. "When needs must, the devil drives."

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But there is another class of recent legislation which attempts to cast in rigid form certain rules of the common law. The most notable instance of this kind is the negotiable instruments act. It is a very lengthy document, and more than ninety per cent of it is taken up with a recital of some one's view of existent, common law rules. That is, it is codification, pure and simple. It has been the vain hope of some that by this process the law of all the states could be made uniform. But already they are finding out their mistake. The law remains supposedly uniform until the various courts begin to interpret and construe the enactment. Then the inevitable variations appear and persist, in spite of the frantic appeals of the sponsors for the act that courts follow the leader and adopt the construction first announced, or some other interpretation that seems better to those who devised the statute.

It is becoming more and more apparent that the plan to so recast the law by legislation that the lawyer in New York can know the law of New Hampshire by reading the New York Statute, is but an idle dream. It must of necessity be so, if the states are to retain their judicial autonomy and are to be left to work out the law according to local views and in harmony with local environment. To the New Yorker, this is of course provincialism. To him, everything is provincial that does not originate between Brooklyn bridge and Hell Gate. He sees small values in a sunrise on Mount Washington as compared with the glitter and glare of Broadway's midnight traffic; and besides he is probably too fat, or too short of wind, or has too many engagements to climb the mountain. But to some of us lean folk, who live in remote places, the things that bear the imprint of the slow processes of the ages have more appeal than the product of the blast furnace or the rotary press. And so we cling to the fashion of law building that made England great, as one of the few attempts now being made

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to keep within hailing distance of the fundamentals of our government.

Perhaps I am prejudiced, for my early training all tended to regard for the common law. I was educated in the fashion of the older generation. As a boy of eighteen I read and reread the commentaries of Blackstone and Kent with all the enthusiasm and reverence of a devoted neophyte. Early in my practice I chanced upon an article by Joel Prentiss Bishop on "The Common Law as a System of Reason." It was written in that vivid style familiar to most of you, a style that makes the sombre pages of a law book full of life and action, quite after the fashion of Carlyle's French Revolution.

Dr. Bishop prefaces his argument with a brief reference to the downfall of Rome which followed the imposition of the code of Justinian; and he adds a tribute to the English common law and a prophecy of the future which is doubly interesting in view of what has happened in the succeeding generation. This is what he said:

"Let me anticipate my argument by reminding you that the world presents now an exact parallel to this. There is a little island upon which the angel of light as she flew over it dropped a spark. Spurning Justinian's folly, she accepted reason, named it the common law, and rose to a power and glory that mock the very brightest of Roman dreams. Her navies rule the seas, her colonies watch the sun in all his course around the world, her glory threw off in one of her flights these United States of America. But the longing for laziness has of late taken possession of her. And she threatens to substitute Acts of Parliament for all her common law of reason; and make it possible for sluggards and fools to practice at her bar and preside in her courts. If she does it, it requires no gift of prophecy to foresee that her encompassing seas will weep upon the dripping rocks around that little island a more mournful requiem to her entombed empire than was ever before sung over fallen greatness and glory."

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Hon. Louis S. Cox

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ANNUAL ADDRESS.

THE TREND OF THE LAW.

By Hon. Louis S. Cox of Massachusetts.

Up to a comparatively short time ago, the average layman thought of a lawyer as one who spent his working days in defending persons charged with the commission of serious crimes. The mental picture was that of a crowded court room, with a dozing judge, and cruel prosecuting attorney, and, as the central figures, the layman's lawyer, arguing, of course, for nothing less than his client's life, with the jury of twelve men, some with stern, set faces, but enough of them in tears to insure an acquittal. There were always people in every community who had met lawyers face to face, some in deadly combat, but more upon the basis of lawyer and client. The latter knew the lawyer as a human being of the ordinary species—much after the sort of the imaginary man, well known in the law, as the ordinarily careful and prudent person, no more, no less. Some ranked a little higher in the scale, some lower, depending in a large measure upon how the case turned out or perhaps more frequently upon the size of the fee.

One was frequently surprised, on the occasion of his first visit to a lawyer's office, to discover such things as rugs, cuspidors of a silvery tinge, pictures, filing cabinets and, in general, an air of some refinement and business surroundings,—rather than the dust-covered, paper-littered, dirt-encrusted hive which seemed to belong of right and necessity to the disciple of Blackstone. Marks, the lawyer of "Uncle Tom's Cabin," Quirk, Gammon & Snap of "Ten Thousand a Year," and the various legal characters depicted

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by Dickens were good enough samples for the average layman, who did not know from personal contact lawyers and of lawyers.

Events of the last few years in some States have served to dispel some of these impressions, however, and if one were to hazard a guess, it might be that today the average layman looks upon the lawyer as a refined blackmailer, an inside highway robber, a criminal.

The fact is, however, that lawyers are not much different today than they were except in so far as the time in which they live, the people with whom they associate, and the general standards of morality have changed.

Their legal training, their mental processes, their ethical standards and all their habits are just as good and just as bad as they ever were, subject always to the twentieth century environment in which they thrive virtuously or fester viciously.

You might reasonably assume that what is to follow is an impeachment or defence of the lawyers, but, on the contrary, it is neither.

It is my purpose to talk briefly and brieflessly of the *law*.

The basis of our law is the Common Law, so-called, which came to us from what historians used to call the Mother Country. It was a law which had developed along with civilization and society. No one man, no hundred men ever sat down, singly or together, and invented it, but just as any structure, human or mechanical, is reared, so the Common Law came into existence. It is true that Lord Coke hundreds of years ago and later Blackstone, set down in writing what they understood it to be, but if neither of these great men had ever lived the Common Law would have been what it was and is.

English civilization had its demands just as did that of Rome and the Continent, and while the latter sought by means of Codes to provide for every possible contingency which might arise in dealings or controversies between the

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State and its citizens or between citizen and citizen, yet the former elected to deal with such controversies, as they arose, with the result that the system of law was always upon a development basis.

When Justinian, you will remember him, of course, as the husband of Theodora, the lion-tamer's daughter,—when Justinian, Napoleon and Frederick put out their codes there was nothing to do but look in the book and see,—not only was the legal yard stick there, but also all the legal cloth to be measured. A Judge was at most expected to be able to read Latin, French or German, as the case might be. Thinking was not very necessary and as for reasoning it was intended to have that all taken care of in advance.

To be sure, the basis of the Codes as well as of the Common Law was one of great principles, but while the Code went further and card catalogued the utmost ramifications, yet the Common Law was content to develop the principles as occasion demanded and to build, precedent upon precedent, a system of law which, while seemingly fixed, had, by its own virtue, an elasticity which has saved it until today and will save it even until tomorrow. When people began to live together and with some degree of freedom as to actions and dealings, it at once became apparent that what a man had, if it was to be of any value to him, required some measure of protection. What he had, ran all the way from his right to live—his life—down to his right to hold a fellow man to his word. So there developed the great branch of the Criminal Law, which had as its basis the purpose of protecting man and his property. So, too, there developed the great branch of the civil law which had as its basis the purpose of protecting a man's property, his contractual rights and the enforcement of certain conduct obligations which seemed necessary in any civilized status of dwelling together. As an example of this last class of obligations—take the use of the highway. It is not so long ago that horses were hitched daily to the posts and rails in the

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main streets of every city and town. Neither beyond our memory is the ox team moving slowly and ponderously along our roads.

In 1902 the Massachusetts Revised Laws were enacted but nowhere in their two thousand odd pages can you find the word *automobile*. And yet the general rule of law as to the use of the highways remains the same as it has been for hundreds of years, namely, you have a right to use them and the other fellow has a similar and equal right.

To be sure, the Legislature has decreed that two vehicles cannot come together without some element of danger, in directing us to turn to the right in meeting vehicles and to the left in passing those preceding us. And there is a further provision that sleighs must have bells,—all ancient provisions which simply codify what every reasonable man willingly did.

The purpose of my illustration is to show how readily and justly the Common Law has adapted itself to our revolutionary changes in methods of travel in so far as the use of our streets is concerned—and all this without finding it necessary to change the law to any appreciable degree.

Under such a system it was inevitable that the *individual* right should at some time reach a period of extreme development. Just so long as our people lived in small communities, or as the new parts of our Country were being settled, it was reasonable to expect the *individual* as such should receive the highest degree of protection known to the law. The spirit of such times was law and order with a profound respect for the rights and property of the individual. Was a villager's house broken into, only to be followed by an uprising of the community to detect the burglar. Was a remote settler's horse stolen only to have the posse run down the thief and string him up. Not that they had so much against the burglar or thief as that they looked upon the house of the villager as sacred of invasion

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and the horse of the settler as an individual piece of property to be protected at all odds.

In the last half of the last Century this protection of individual rights and property reached its highest development. It was the era of individual development; individual prosperity and individual responsibility as well. We had no patience for the ne'er do wells. Abraham Lincoln, the rail splitter, James A. Garfield, the tow path boy, had risen to the Presidency. Andrew Carnegie, the telegrapher, had become a millionaire. From one end of the country to the other, in every village and town, there were hundreds of thousands of Lincolns, Garfields and Carnegies, different only in degree. What they had was theirs. The law delighted to protect them in their enjoyment of it and the people agreed.

Then some people began to talk in parlors and on street corners about the classes and masses. Someone said the great and glorious Constitution gives every man the right to life, liberty and the pursuit of happiness, and then asked where the happiness was to which he was entitled. Whereupon someone said "read your Constitution and you will see that the only right guaranteed you is to *pursue* happiness; nothing is promised about your ever catching up with it." Coincident with this insistent demand on the part of those who said they represented the classes was a shifting of our population citywards. In other words, the individual grew inversely as the square of the city developed, that is, if I have stated this formula with any degree of correctness, he began to shrink. The classes, social classes, came to look upon him as only one—and a very small one—of a great group, and when it came to a choice between him and the group, he had to stand aside. He could still argue that all he had was the fruit of his own toil, that while he worked, the first citizen of the class lived in idleness and demanded that the State take care of him.

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The short answer to it all was that he had something and the class hadn't. How he got it didn't interest the class.

And so the Landlord found the legislature telling him how much or how little he could raise his rent; the house-builder was advised as to where he should place his house on his own land, the Mill man was told when to open and shut his factory, so, too, the storeman. Likewise the Employer of Labor was directed to pay every employee who got hurt while on the job, regardless of why.

These illustrations are the result of legislative action and with them the law has no first concern beyond determining whether they conflict with the Constitution.

The end, however, has by no means been reached; in fact, to some it seems as if the surface had but been scratched.

Take the case of an automobile collision. Nothing seems more reasonable, to lawyers at least, than if I borrow your car and while using it solely for my own use with absolutely no advantage or benefit to you, I injure someone, you ought not to be held responsible. And for no different reason than if I should be using your fishing rod at Moosehead and carelessly hook some innocent stranger in the eye, he would never think of trying to collect damages from you.

But the social class idea says you should pay. Why? Can a true analysis of the argument for such a proposition disclose anything but this, namely: An automobile belonging to an individual, who has been thrifty enough to be able to buy it, has injured someone; should that someone go without redress, especially when the person who has borrowed the car is unable to respond in damages? No—and whether the owner or the State shall pay does not matter so long as someone does. And so we have all sorts of proposals,—compulsory insurance, additional taxes and what not, all seeking to provide some measure of creating not so much a remedy as a responsive source from which compensation shall flow. Then there is the insistent demand that some fund shall be created from which compensation may

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be had in case of railway accidents, and many other illustrations might be given of instances where the rights of the individual are being put to the one side, when they conflict with the possible redress of the classes.

But in all this seeming obliteration of the individual, one vivid exception stands out, from which one may derive hope or despair, according to how he thinks.

Let a man be charged with the commission of some crime and then observe the trend of public sentiment towards him. Undoubtedly a great many still feel that he, if guilty, should pay the penalty, but on the other hand, there is unquestionably a great class which feels that the State has no right to exact it. What a multitude of questions arise in such a case! Is he mentally responsible? Is his offence a popular or unpopular one? Should he be given another chance? Should the jury by its verdict write some more unwritten law? Is he any worse than hundreds who have never been caught? The jealousy with which it is insisted that the law must protect the criminal's rights is to some a paradox.

Not so very long ago the question of whether a man should take a drink or not was a personal matter. It was legally concluded that the individual had made more or less of a failure in properly deciding this question and that the Nation as a class would be better off if his personal wishes were no longer consulted. Opinions differ as to whether the working out of the Prohibition amendment is a success but the law remains as a splendid example of what a Nation may try to do in derogation of one's individual rights. It is only different in degree and not in kind from the laws which have been steadily finding places in our books and which regulate our railroads and public service corporations, which, in the name of public health and under the all expansive term, the police powers, regulate, forbid, restrict and define so many of our every day activities. All these were hailed by the classes as great strides forward in the

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march of social equalization. Not until the 18th Amendment to the Constitution made Volstead and Hooch household words, did the classes even stop to ask the question—where will this lead us? Some people say the Amendment is a radical subversion of the individual rights,—as if it had come to us out of a clear sky. They forget that for twenty years we had been getting ready for just such a thing. By this I do not mean temperance propaganda and concerted action by the Drys, so-called, but rather do I refer to the general trend in law making which has carried us so far that even National Prohibition seemed easy of acceptance.

When Judge Landis fined the Standard Oil Company that fabulous sum, the classes applauded, and forgot to complain much when gasoline and kerosene were later advanced in price, but when Enforcement Agents began to invade homes and to search persons, the classes began to cry to the Court for the protection of the Constitution.

Enough has been said to indicate how far reaching this social class legislature can be. But the end is not yet.

Just as the law makers have listened to the call of the classes, so are the law expounders being importuned to waver in their interpretations, and to many critical observers it seems that some of the Judges are not altogether deaf to such importunities.

There is a great field which suggests itself here but which can only be briefly touched and that is the attitude of the Courts when construing legislative acts which involve Constitutional questions. We used to think that the greatest of all checks and balances in our government was the duty imposed upon the judiciary by the Constitution to stay the advance of arbitrary governmental action, whether that action be in aid of industrial democracy or industrial oligarchy. If the judiciary is not to be a restraining force it is without function. The judicial interpretation and admin-

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istration of law necessarily looks backward—to the law. The legislature looks forward; between the two forces we have constitutional government. If the judges are to become evolutionists under the banner of industrial democracy they have merely abdicated their functions. When we attempt to analyze the trend of thought of some eminent Judges, it would almost seem that they have for the time or forever forgotten what is meant by the word sovereignty in this Country. The truth is that the Constitutions themselves, state and federal, are the sole expressions of sovereignty in America and that all other action by governmental agencies are exertions of delegated power and not of sovereignty. Sovereignty here is a term which can be applied only to the people and never to the legislature or other agencies which they have established. We must all admit that the national organism is a synthesis in which agencies not governmental in character exert a more powerful influence on the functions of society and perhaps by way of restraint on individuals than any of the specified mechanical devices or departments of government; and that in none of these devices such, for instance, as the legislature, is there any element of sovereignty of such a character as to demand our instinctive allegiance. Time was when law derived its authority from notions of divine origin or as an exertion of the sovereign power of a king. That day has passed. And now after over a century of trial we find our established governmental agencies, executive, legislative and judicial, all regarded lightly, if not derisively. Nations are but people and sovereignty is outworn. The spontaneous allegiance which heretofore attached to *forms* of government has atrophied and we are but slowly replacing it with abstract conceptions. Under these conditions it is disturbing to find the Courts disposed to jettison the true sovereignty reserved to the people and represented by the guaranties in the Constitution, to preserve a fallacious and non-existent sovereignty in the legislature.

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A just regard by the judiciary for the conclusions reached by a co-ordinate agency established by the people requires, of course, that legislative action should not be declared arbitrary and in conflict with fundamental guaranties except in plain cases. But judicial deference for legislative acts based on the notion that the adoption of a statute is an exertion of soverign authority is an erroneous exaltation of a governmental mechanism and tends to the abdication by the courts of their primary obligation under the Constitution to determine for themselves and upon their own high mental processes whether the citizen invoking their protection is entitled to relief from legislative action asserted to be arbitrary, unreasonable or unnecessary, having due regard for the restraint upon his liberty and a bona fide public end to be gained.

Legislative power is accordingly to be analyzed and tested by the Courts as any other delegation of power to an agency performing any function of government, whether it be the president, a governor, Congress or a state legislature, a municipal council, the United States Shipping Board, reasonable rules adopted by common carriers, or regulations or orders of any of the numerous commissions functioning under delegated authority.

Judicial review undoubtedly carries high presumptions in favor of the propriety of the action, resulting from ordinary considerations of comity and because of the supposedly better opportunity of these agencies to weigh and determine any fact involved. This is an intensely practical accommodation and is quite different from the awe of sovereignty which has a tendency to prevent judges from analyzing the daily grind from the legislative presses for just what it is: the action of a part of the governmental mechanism discharging under high pressure from transient majorities and highly organized minorities—often under pressure from nothing more than the erroneous apprehen-

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sions of the members—a function consciously and in all cases subordinated by the Constitution to the scrutiny of the judiciary.

It seems that some of our great jurists, in deciding Constitutional questions have sought to substitute the test of social economics and comparative legislation of other countries for the conclusions of themselves as judges. They seem to go even to the extent of trying to imagine the conclusion of a hypothetical "reasonable man" and accept their concept of that man's conclusion notwithstanding abiding convictions to the contrary entertained by them charged as they are with the duty of decision.

Listen to some of their language: "In present conditions a workman not unnaturally may believe that only by belonging to a union can he secure a contract that shall be fair to him.....if that belief, *whether right or wrong,* may be held by a reasonable man, it seems to me that it may be enforced by law." Again, "The judges themselves have failed adequately to recognize their duty in weighing consideration of *social* advantage." Again, having accepted as final that industrial democracy must advance, it lies with the lawyers and judges "to say in what lines that action shall be expressed .....in lines of evolution or in lines of revolution." Again, "the accident of our finding certain opinions natural and familiar or novel and *even shocking,* ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." This last expression is a very different view from that held by Chief Justice Marshall when he wrote: "The opposition between the Constitution and the law should be such that *the judge* feels a clear and strong conviction of their incompatibility with each other."

It is not difficult to imagine what would have become of the Constitution had these latter day fatalistic judges occupied Marshall's seat.

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It would seem that they are wrong. Individual judges must reach conclusions on their own responsibility. Their high personal attitude cannot be eliminated. The genius of our system contemplates an intensive selection of the most distinguished jurists of the nation. They were expected to be superior in their wisdom and to announce their own and not their neighbor's conclusions.

It was never the opinion of Iredell and of Marshall and of the great jurists, who over a century ago made plain the transcendent responsibilities imposed upon the courts under the Constitution, that the duty resting upon them to enforce the guaranties of the Constitution against arbitrary governmental action, legislative or otherwise, could be abdicated by turning the citizen over to his tormentors with the suggestion that while the judges might indeed be of opinion that his plea was well taken, they must nevertheless acquiesce in the action restricting his liberties because a preponderating public opinion, not concurred in by the court, insisted upon the reasonableness and necessity of the action proposed. That may be the judgment of the rational school, but two thousand years ago it was the judgment of Pilate.

It is suggested that if the Courts abdicate their functions in determining Constitutional questions, the next step will be to demand similar conduct with respect to the Common Law. To some it may seem that already the demand has been made and heard. Take the case of the attempt, which has succeeded in some jurisdictions, to hold the parent responsible where some member of his family in using the automobile belonging to the head of the household has caused injury to another. To hold the father liable in such cases where he would not be liable according to well established principles of law would likewise make him liable in case his son injured someone with a baseball bat which had been presented to him by his father. And yet, the development of the idea of holding the father responsible under the

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"family" theory, is going on, simply because, it is suggested, it is the only way by which someone can be made to pay for some other person's damage.

In most jurisdictions, however, the tendency is to adhere in a rational way to the established principles of law, mindful at all times, however, that as times change, the law has little difficulty in adapting itself to the change.

A vital question is presented as to what would happen to us if, in view of the steady march of social class progress, the interpretation of the law should stand still.

Fortunately it is believed that the question need not be answered. It seems inevitable that with all the radical changes which are going on, the law too must at least adapt itself thereto. The two forces probably could not survive a long period of conflict—and fortunately no such conflict is reasonably to be expected.

The great common law Judges in the early days were not loath to invent fictions of law to tide them over troublesome points. Perhaps it would have been better to say the Judges were not loath to accept the fictions which the lawyers invented. It was some shock to the common law to have the churches stripped of their lands. Such a shock would have turned a Code upside down. The common law, however, not only was able to accept the new situation but to proceed on its even keel in so doing. And so it has been able to do in every emergency. Its elasticity, to which I earlier referred, is its strongest card. This elasticity must not be confused with vacillation, for it is farthest from it. Perhaps it would be better to call it adaptability. Moreover, as already pointed out, all these acts of social legislation, sooner or later, call for interpretation by the Courts, and in their decisions the Common Law is the source from which judgment is drawn. Thus far the Courts have quite generally held that Legislatures must have had in mind the general principles of law when they were framing new legislation.

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One grave danger continues to threaten with varying degrees of intensity. I refer to the recall of Judges and more especially to the recall of Judicial Decisions. These were parts of the program of the social class advocates. Not only did they wish to make the laws but also to be able to say whether the interpretation put upon them was acceptable to them.

To some observers, it seems that the demand along this line is not so insistent as it was, and that today there is a feeling even among the classes that it is not such a bad thing after all to have, as a part of our system of government, a group who can interpret the law along sober lines of sound judgment, uninfluenced by unreasonable expediency and removed from politics.

New Hampshire and Massachusetts stand virtually alone with their appointive Judiciary. The system has to stand repeated attacks, yet the last Constitutional Convention in Massachusetts which accepted the Initiative and Referendum balked at having it apply to the Courts and refused to recommend the election of Judges.

In the light of present day events, it is a fair guess that the people of the state are glad that the same forces who are said to boast that they elected certain District Attorneys are not in a position to claim the same as to Judges. Events in the City of Cleveland a few years ago have not advanced the cause of elected Judges even if we have forgotten the scandals of a decade ago, which involved the Railroad and Mining Judges, so-called.

Not that elected Judges are naturally corrupt or incompetent but rather that they are naturally, as human beings, subject to different lines of thought and even influence. Their stake is personal in the sense that they are servants of a suffrage which does not always reward well doing.

A vote-getting Judge can probably go as stale in time as an Alderman, Mayor or Senator. Perhaps he can also turn out as well or as bad if he has to travel the same route.

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The Common Law as a system has safeguarded the rights of the people of the two greatest Nations of the earth. Its vitality has proven to be the strongest single element in the structure of English speaking governments. Its great principles, founded upon the common experience of mankind when governed by the Golden Rule, have endured through changes which have radically altered our whole thought of government.

The criticism of the impatient reformer is sometimes that it is out of date but generally by the time he gets started on some new task he finds that it has caught up with his last front line of attack.

If the system is to endure, its course must be so. It must broaden as our views of life broaden—it must change to conform with our new existence. It is frequently described as a protecting arm but it has never been an arm which in seeking to protect has never changed its position. It has ever been as skilful in its defence of the life and liberty of the people as is the guard arm of the great fighter which, constantly shifting, continually protects his vitals. Such it was meant to be—such it has been and will be.

The conservative critics must not be heard to say that its ear is to the ground in the sense that it is seeking to be unduly influenced by the popular will. Its ear has always been to the ground in a proper sense and the greatest Judges have been those who, with a breadth of vision gained by an intimate knowledge of men and things, have not hesitated to adapt its principles to novel situations.

The Social Classes are having their day just as the Individual had his.

The lone rider has been unhorsed and is being ridden over by the huge vans which are hardly large enough to carry all who would ride. Great changes have taken place—many of them for the better. Some of these seemed abhorrent to many of us when they first appeared, but today we would not change them if we could.

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The jug of reform has been shaken so vigorously that when we get a chance to look into it we are surprised to find it nearly full of froth. The Common Law has thus far been able to see and reach through the froth to the true liquor of reform and stabilize it.

The greatest danger in all this—not to the law, but to society—lies in the fact that individual responsibility has fallen to a low ebb, simply because it does not count for so much.

History, however, has demonstrated that such a condition will not permanently deter the individual. He will rise in spite of any system or any openly avowed scheme to hold him back. After the classes, in their efforts to gain everything, have given away all their rights as individuals, they will turn about and demand them anew.

If this were not so Englishmen would never have gained the Magna Charta. Perhaps we will live to see a new one written which will undoubtedly be drafted along the same lines as the original precious document.

The Parable of the Lost Sheep will not down.

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Louis E. Wyman

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THE AMERICAN BAR ASSOCIATION AT HOME AND ABROAD IN 1924.

By Louis E. Wyman.

To the membership of the New Hampshire Bar Association perhaps these brief remarks may bring added inspiration and love for our ancient profession of the law. We deal with the relationships of men; we are ever asked to place ourselves in the shoes of our fellow man, and to act and speak as he ought to act and speak when guided by the best of human reasoning as it has developed through the ages and crystalized in what we call law. Some of those relationships are petty, but there are many which are grand and vital to society. To some of us must come the task of looking after the little things. To others of us is entrusted the duty of handling affairs of supreme importance; and it must be a reason for finding happiness in our work to know that the work of all is necessary to the upbuilding of the great legal structure which has been handed down to us and which we in our turn will pass on to future generations.

Attending the meeting of the American Bar Association in Philadelphia as a delegate (with James W. Remick of Concord), I was impressed with the importance of Bar Association effort to improve and modernize the law. Because human reason can not move faster than human experience, it seems inevitable that the law must always be somewhat behind the event though it always tries to test the new with the analogies of the old. The activities of the delegates from the State Bar Associations and of the other committees of the American Bar Association are reported in the Journal of the Association and in the Annual Report; they are worth reviewing, but I do not need here to dwell on them in detail beyond reminding you that here was an

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exchange of experience among lawyers of standing that must benefit not only those who attended, but also the profession as a whole and society at large. Very busy men, men also whose names are nationally known, men to whom time must indeed mean money—were there in solemn consideration of public questions prompted solely by their interest in their profession. During the three and a half days—July 7 to 10—sections and committees through long hours met and considered problems and papers to which obviously the speakers had previously devoted much preparation. These are a very few of the topics—Legal Education, Judicial Selection, Bar Organization, Federation of State and Local Bar Associations, Conciliation through Small Claims Courts, and the Relationship between the Press and the Bar.

The discussion of the topic "Co-operation of the Press with the Bar in the Administration of Justice," was well worth the trip to Philadelphia. Charles A. Boston and Wilson M. Powell of New York, and Walter F. Dodd of Chicago, spoke as lawyers; and Charles S. Yost, President of the American Society of Newspaper Editors, and Dr. Talcott Williams, Director Emeritus of the Pulitzer School of Journalism of Columbia, represented the Press. The speakers were alike earnest and sincere to attain the end—co-operation; and it was with the best of feeling that on the one side or the other criticisms of practice were offered. And it was to me most interesting to read the newspapers the next morning. You will note that the suggestion had been made during the discussion that newspaper accounts of legal proceedings had a tendency to be one-sided and to give to readers a wrong impression of what actually took place; and the papers presented by the lawyers were very able, very carefully prepared, and took quite as much time as did those of the newspapermen, but, behold, The Philadelphia Ledger of July 8, headlined only what was said by the representatives of the press and gave to the lawyers less

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than a quarter of a column out of three and a half columns that were devoted to the remarks of the speakers.

You may well read President Saner's address on American Citizenship.

You will do well to consider with Attorney General Stone the relationship between law making and law enforcement.

You ought to have heard and will now enjoy reading what Dean Pound of the Harvard Law School had to say on "Some Parallels from Legal History;" and you will acquire new faith that our Common Law will in due course adapt itself to present day conditions just as through many critical, stormy periods it has adjusted itself in the past.

If more of us would attend these meetings, if we would then somewhat broaden our own activities and lead ourselves into closer co-operation with the national association, may it not be that we would strengthen ourselves, not only as lawyers but as leaders of public sentiment.

When communities were small the village squire was looked up to; his opinions were respected and his advice sought on public questions as well as on private matters. With the advent of the corporation there has grown up some feeling of distrust of the lawyer, a feeling that he is always serving some private interest, that he does nothing except for pay. We have seen that tendency illustrated very recently in the attacks made on McAdoo and even on Davis, the Democratic nominee. To offset this distrust may it not be possible that through the organized voice of the Bar some of the old prestige may be regained?

The social side at Philadelphia also had its place—the President's reception, the Annual Dinner, special side trips to the Navy Yard and to Valley Forge filled out long days of pleasant companionship. To many members of the Philadelphia Bar we must be long indebted for their efforts to make our meeting there a success.

While in Philadelphia I heard considerable talk of our expedition across the seas, and men seemed impressed by

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the thought that so many were going rather than by any expectation of immediate accomplishment. The spirit of anticipation seemed to be similar to that of a college reunion, and the expression was that the mental reunion, the exchange of ideas, and the fact of actual contact between the men of the bar in both countries would in the years to come have great influence for good on the legal systems of both countries.

We were due in London July 19. The Berengaria, specially chartered, carrying all lawyers and their families, sailed July 12; the Acquitania sailed July 9. the Laconia July 11, and these also had many hundreds of our brothers of the Bar on board. Of our Bar Harry Bingham of Littleton sailed earlier, but with his wife was duly on hand in London. Allan Wilson of Manchester went with his son on the Acquitania; Judge Leslie P. Snow and his wife were on the Laconia, and it was a great pleasure for me on the Berengaria to exchange wireless greetings in mid-ocean with Judge Snow.

We landed on our hosts of the English and Canadian Bars twenty-five hundred strong. They really ought to have been swamped. I heard Lord Robert Cecil say that the original estimate of the joint committee was eight hundred to a thousand. Their original arrangements were for twelve hundred. You may well believe that the registration office and the secretarial forces were taxed to the utmost. The registration office and headquarters were at the Cecil. Each of us at once received a large envelope containing insignia, buttons, invitations and cards of admission to various events and extended instructions about the program which covered seven full days. On Sunday, July 20, there were special services at Westminster Abbey, St. Paul's Cathedral, Westminster Cathedral and Temple Church. Through the following Saturday every day was filled. It was actually difficult to find the time to spend a few hours at the great British Exposition then going on at

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Wembley. No one could take in all the entertainments. No one of the dining halls where our hosts knew that we as lawyers would want to dine was large enough to hold us all; and they ran the dinners in series. On Monday, Tuesday and Wednesday nights the dining halls of the Inner and Middle Temples, Lincoln's Inn and Gray's Inn and the Law Society were the scenes of unequalled hospitality. The Lord Mayor and Corporation of London provided a dinner at Guildhall for more than eight hundred of us in a setting of medieval formality. There were many receptions and garden parties in our honor—by the Mayor and Mayoress of Westminster at Caxton Hall; by the University of London; by Lord and Lady Phillimore at Cam House; by Master of the Rolls, Sir Ernest M. Pollock at Grocer's Hall; by the City of London Solicitors' Company; by Viscount and Viscountess Astor at Clieveden; and by the Lord Chancellor and others at the Palace of Westminster—and a special trip to Oxford and Cambridge on the 26th. Even these were not all. The King and Queen gave a Garden Party for us in the Gardens of Buckingham Palace. On this latter occasion one from each state was in line to be presented to Their Majesties. I happened to draw the honor of receiving a notice from the Lord Chamberlain that he had been directed to see that I was to be presented. And that brings me to the tender subject of dress—morning dress, evening dress, hats, neckties, gloves, and umbrella—and spats; these to us in those days were very serious matters. To our hosts these things were perfectly natural, but at least to some of us they were a puzzle. Of course, Judge Snow was quite at home in a tall hat, and Harry Bingham carried his dignity with elegance and ease: but until that Garden Party was over I am sure Brother Wilson had his troubles. He blossomed from day to day—threw away his American straw hat, bought an English felt, varied his neckties to match his collars, bought an assortment of gloves and a cane, and finally spats. He was so conscience stricken about

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these last that he asked his son not to tell me—(and then he saw my white ones)—but he had his reward, for when the King saw him in his gorgeous raiment on the Palace Grounds, he left his Queen Consort to greet his former subject.

In this whirl of festivity it was not easy to spend much time in the Courts. Yet a jury trial of a personal injury—automobile case was a real treat. They drew the jury in the absence of counsel. There were no challenges. The evidence went in with despatch. Plans were proved by agreed statement and not through witnesses. The barristers argued the case for their respective clients with startling impartiality. And the Court delivered the closing argument—for the defendant.

One incident in this trial was instructive and significant—a witness confronted by a contradictory statement undertook to fence with cross-examining counsel; and then the Court took a hand—the fencing stopped—in tone and manner that witness showed the greatest respect and fear for that Court. This same respect for their Courts you can see running through the newspapers. Their judges are fearless of political favor and are accustomed to express their opinions on the facts to the jury, and they do express those opinions on the evidence in no uncertain terms. They have so exercised this duty and power that in consequence the English Judiciary stands high in public opinion.

This respect for the law and the Judiciary was a part of the atmosphere into which we went. It is difficult to translate that atmosphere into words. As lawyers we were among friends and were at home. The legal profession of America was not in a foreign country. Speaking one language, our English brothers dealt with the same principles of jurisprudence in substantially the same way as we do. Yet we would not belittle our own institutions if we admitted we might yet learn a lot from them. They gave us Blackstone; and it was in recognition of the fact that in

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the past we have learned a lot from their Blackstone that the American Bar Association presented a statue of Blackstone which is to stand in the Royal Courts of Justice in commemoration of our visit.

Possibly Blackstone like other lawyers made more than one mistake. One of the most interesting of Blackstone's mistakes was referred to by Mr. Hughes when he responded to the welcome of the British and Canadian Bars in Westminister Hall. Mr. Hughes said that Blackstone "expressed the view that the common law of England as such had no allowance or authority in the American plantations, they being no part of the mother country, being distinct though dependent dominions." Every lawyer knows that this is not the view that prevailed in America. We adopted the common law as an integral part of our Bill of Rights and our Constitution as it was in England at the date of our separation; and while, as that law has developed with us, it has followed substantially the same lines of reasoning that have been adopted by the English Courts, nevertheless, it seems as though there is an indefinable something in our atmosphere which has made for a lack of respect for the law which our English brothers have succeeded in keeping. In part that may be due to our American habit of considering the present exigency notwithstanding the past. We lack a reverence for the past that they with their historic structures cannot escape. When you consider the flood of historic memories that must have come to every lawyer who attended that formal reception in Westminster Hall, you will appreciate this. Westminster Hall which was erected by William Rufus and completed by Richard the Second has stood there practically unchanged for some eight hundred years. The trial of Charles the First and of Warren Hastings and innumerable other historic trials have been held there. It has seen the development of our law almost from its beginning. Blacked and solemn in age, this structure and the institutions which have grown in and around

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it are really our institutions. The Lord Chancellor of England in welcoming our Bar said that he "thought the great event of 1776 a fortunate event in the end—that it had done more to fashion and strengthen the ties between the people of the United States and the people of Great Britain and Canada than anything else that has happened in the world's history." The Attorney General of England standing in that Hall and referring to the common foundation of our laws asked "was it too much to think that many of the guests present could also look back and see their ancestors standing by the side of our ancestors," and in closing his reply Mr. Hughes said "this meeting of those who enjoy a common tradition and cherish a common purpose cannot fail to heighten our sense of responsibility as we find our strength renewed, our ardor quickened and our hearts deeply stirred as we sit together at the fireside in the old homestead." I am not speaking to you of any political alliances; I am speaking to you as a lawyer who is practicing the same kind of law that has been practiced in England for centuries, very different now in some particulars, far less technical, applying far broader principles of justice, yet underneath following the same process of reasoning. And to one who loves his work, who delights in the consideration of those expressed rules of human conduct which are called laws as they have developed and are developing, a new enthusiasm for his work may be gained by the thought that our work is not temporary but that we are building slowly but surely for the future just as other lawyers have through the centuries in England built to lay the foundation for the structure upon which we are now working. Back of all the social activities that were provided for our entertainment I felt this atmosphere of the law—at Westminster, at the various Inns, and in the Courts—that there was the foundation that was back of our present.

The other impression that was firmly fixed in my mind was that the English system was really more judicial than

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ours. Their Bar is more of a unit; indeed it is a unit. It is only through the Inns of Court that one may be called to the Bar, and it is only by the Inns of Courts that one may be expelled from the Bar. That power is not given to the Courts as it is with us but is entrusted to the very societies that call men to the Bar; and in their pride of membership they maintain a high standard of integrity and undoubtedly a better attitude toward the administration of justice than we do. May it not be worth consideration by us whether our own Bar should not be charged with the discipline of its own membership. Would the Bar purge itself quicker than the Court has been able to? This is one of the problems that has been agitating the American Bar Association—that has been the subject of section work and committee reports—the incorporation of the Bar and the raising of the standards of legal education and the improvement of legal ethics. Here again we may add nothing to the discussion, but it should be helpful to our own Association to consider and to discuss among ourselves these topics and determine if we should not advocate before our Legislature the incorporation of the Bar for the betterment of the profession and the protection and advantage of the public.

After the London Meeting, the Irish, Scotch and French Bars had all extended invitations to the Members of the Association. I accepted the French invitation for July 29, 30 and 31. I went to Paris by air and had a trip that is most pleasant in retrospect. Through two storms, in and out of black clouds, through fog and sunshine, the voyage from Croyden Field outside of London to Le Bourget outside of Paris at eighty miles an hour, two thousand feet up, can never be forgotten.

Formal receptions of welcome at the Palais de Justice and at the Hotel de Ville by the French Bar and the Municipality of Paris, followed by receptions by the President of the Republic at the Elysée Palais, and by Batonnier

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Fourcarde of the Paris Bar at the Union Interalliée, were fine examples of French courtesy and entertainment. In spite of the difference in language which might prevent full understanding, one cannot visit France, take a brief view of the battlefields up to Verdun, through the Argonne, and see and talk with some of their people without warming in sympathy to a realization of the great work of reconstruction that France has undertaken and accomplished. The French have had faith in the justice of their cause and in their right to reparations, and they have believed that the world would ultimately stand back of them in their demands. And this lasting impression which came to me I pass on to you, that we here have a real duty not to forget France.

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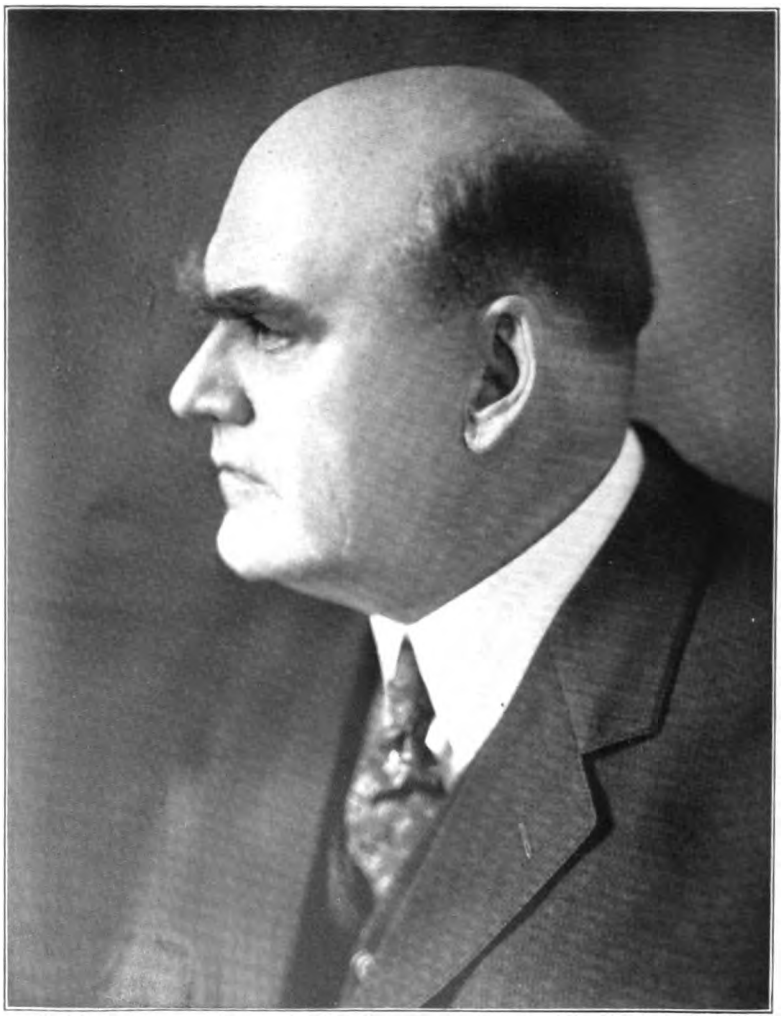

HON. OSCAR L. YOUNG

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REPORT OF COMMITTEE ON LEGISLATION.

To the Officers and Members of the State Bar Association:

In view of the fact that no suggestion as to desired or desirable legislation upon any subject has been brought to the attention of your committee, that committee is left entirely upon its own resources, and proposes to attempt to do nothing more than reflect the personal attitude of its individual members.

Having no intimation of any crying demand for new legislation, and recognizing no duty on our part to attempt to create one; feeling that almost every subject is fully covered; believing that personal conduct is now so regulated that it is almost impossible to be a law-abiding citizen; being convinced that further regulation and restriction is unnecessary; and that further additions to the vast bulk of our already complex mass of legislative enactments will be superfluous, we respectfully recommend that further action on the part of our legislature be deferred, at least until such time as we shall have before us a compilation or revision of the existing statutes of the state, so that it will be possible to ascertain what laws are actually in force, and also have the new digest to enable us to find the court's interpretation of those laws.

OSCAR L. YOUNG,
MERRILL SHURTLEFF,
WILLIAM J. STARR,
Committee.

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REPORT OF CITIZENSHIP COMMITTEE.

Your Sub-Committee of the American Bar Association offers the following report.

We held our Organization Meeting on August 20th, 1923, at office of Harry F. Lake, Esq., Concord, N. H.

There were present: J. A. Broderick, Harry F. Lake, Wilfrid J. Lessard, Francis W. Johnston. Attorney General Irving A. Hinkley had arranged to be present, but was unexpectedly called to Boston on the Tsekos murder case.

The suggestion of the American Bar Committee that the anniversary of the adoption of the constitution be observed September 17th by exercises in the U. S. Court Room, at which Judge Morris and Mr. Smith would make addresses, and the Bar would be asked to attend and respond, was deemed to be impractical because the Court opens at Littleton on the 18th, and distance would prevent any considerable attendance of the Bar.

As a substitute it was decided, inasmuch as there would be a goodly attendance of Grand Jurors, witnesses, some of the North County Bar, court attaches and the public, at the opening of the Court at Littleton, that we should suggest to Judge Morris, that in addressing the Grand Jury before they retired, he take occasion to advert to the significance of the day as the anniversary of the adoption of the Constitution.

Mr. Lake was delegated to carry out this item.

And in addition it was likewise decided to make the same suggestion to the Judges of the New Hampshire Superior Court, especially, at the opening of the Fall Terms in all the Counties, but to be extended throughout the year, if the judges approved.

Mr. Broderick was delegated to carry out this item.

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JAMES A. BRODERICK

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Regarding the observance of Constitution Week, September 16, 1922, it was deemed that a respectable observance might be accomplished through the Schools, the Clubs and the Press.

During the last week of August there was assembled at Keene, a convention of School Superintendents from all parts of the State. It was decided to get in contact with them at that time, and to draft them to the task of inaugurating a state wide school observance of "Constitution Week" as a beginning of making the study of the Constitution a part of the work of every advanced class in history, during the whole school year, in accordance with Chapter 47, Laws of 1923.

It was also decided to enlist the co-operation of the Parochial Schools, through Bishop Guertin.

Mr. Lessard was delegated to carry out this item.

In addition it was decided to enlist the co-operation of the various Patriotic Societies, Women's Clubs, Fraternities, "Service" Associations, (Rotarians and the like) through their State Executives.

Mr. Johnston was delegated to carry out this item.

It was also decided to procure editorial expressions from all the State papers, during Constitution Week.

Mr. Broderick was delegated to carry out this item.

It was also decided to enlist the Naturalization Clubs and Compatriot Associations, like the Canado-Americaine and the Polish and Greek Societies.

Mr. Broderick was delegated to carry out this item.

It was also decided to endeavor to organize a speaker's Bureau, somewhat like the 4-Minute Men of War Time Work, and Mr. Hinkley was delegated to carry out this item.

It was also decided that inasmuch as the President, Vice-President, and Secretary were ex-officio members of this committee, that copies of these Minutes be sent to them with request for co-operation and suggestions.

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As a result of our efforts Judge Morris of the Federal Court and all of the Judges of our own Court, at the Fall Term openings noticed the occasion of the Anniversary of the adoption of the Constitution in their instructions to the Grand Juries.

Our effort to induce the Editors of the State to note the observance of Constitution Week was generally successful. Practically every paper in the state had some editorial reference to the occasion during that week.

Our efforts to get the Patriotic Societies and Fraternal Organizations to observe the occasion, had some success. How much we have no means of knowing, but from Newspaper reports we judge it that most of the Organizations paid some attention to it and we know that in some instances the celebration was a very important occasion.

For Thanksgiving Day we induced the Ministers' Associations to urge its members to take note of the slogan of your Committee in their Thanksgiving Day Services, and are able to report that they did so. We afterwards met with the Ministers' Association and explained the purpose and method of our efforts.

The State Grange, Patrons of Husbandry, met in Manchester in December, with an attendance of several hundred from all parts of the State. We succeeded in inducing the managers of the meeting to include in its programme an address on the Constitution and Anson G. Osgood, Esq., of our Hillsborough County Bar, made it.

Our most serious activity has been with the "Teachers' Institutes." We have five teachers' organizations in the State, each of which held a meeting in various parts of the State during the week of March 3rd. We covered each of these meetings as follows and have received commendatory letters from the State School Department. That is:

At Lancaster, Edgar M. Bowker of the Coos County Bar.
At Dover, Conrad E. Snow of the Strafford County Bar.
At Keene, John J. Landers of the Cheshire County Bar.

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At Nashua, Alexander Murchie of the Merrimack County Bar and

At Tilton, J. A. Broderick of our Committee.

Since then we have been inactive except that we did make an effort for a series of five meetings in May with the Labor Unions in Manchester. It was found impossible to get those meetings, but one meeting was arranged with the Central Labor Union, made up of delegates from the "locals" of the American Federation of Labor. This meeting was attended early in June, and was satisfactory.

In August this year we received from the American Bar Committee a circular urging us to organize Constitution Week Observances for this year, on a plan developed by the American Bar Committee and outlined in a pamphlet costing $10. per hundred.

We have carried out the request by addressing the heads of the various patriotic, Fraternal, and "Service" Organizations throughout the State, sending to each four copies of the American Bar Pamphlet. This, with the mailing, cost us $11.50, but inasmuch as the Secretary has informed us that the Association is too poor to stand this expense we have borne it ourselves.

That is the extent of our activities. We have spent $6.00 of the Association's money.

Our recommendation is that we be discharged and ten new committees appointed in our stead. The American Bar should be helped in their endeavors but the whole state is too much for one committee.

We have reported our activities to President Saner and have received a commendatory report.

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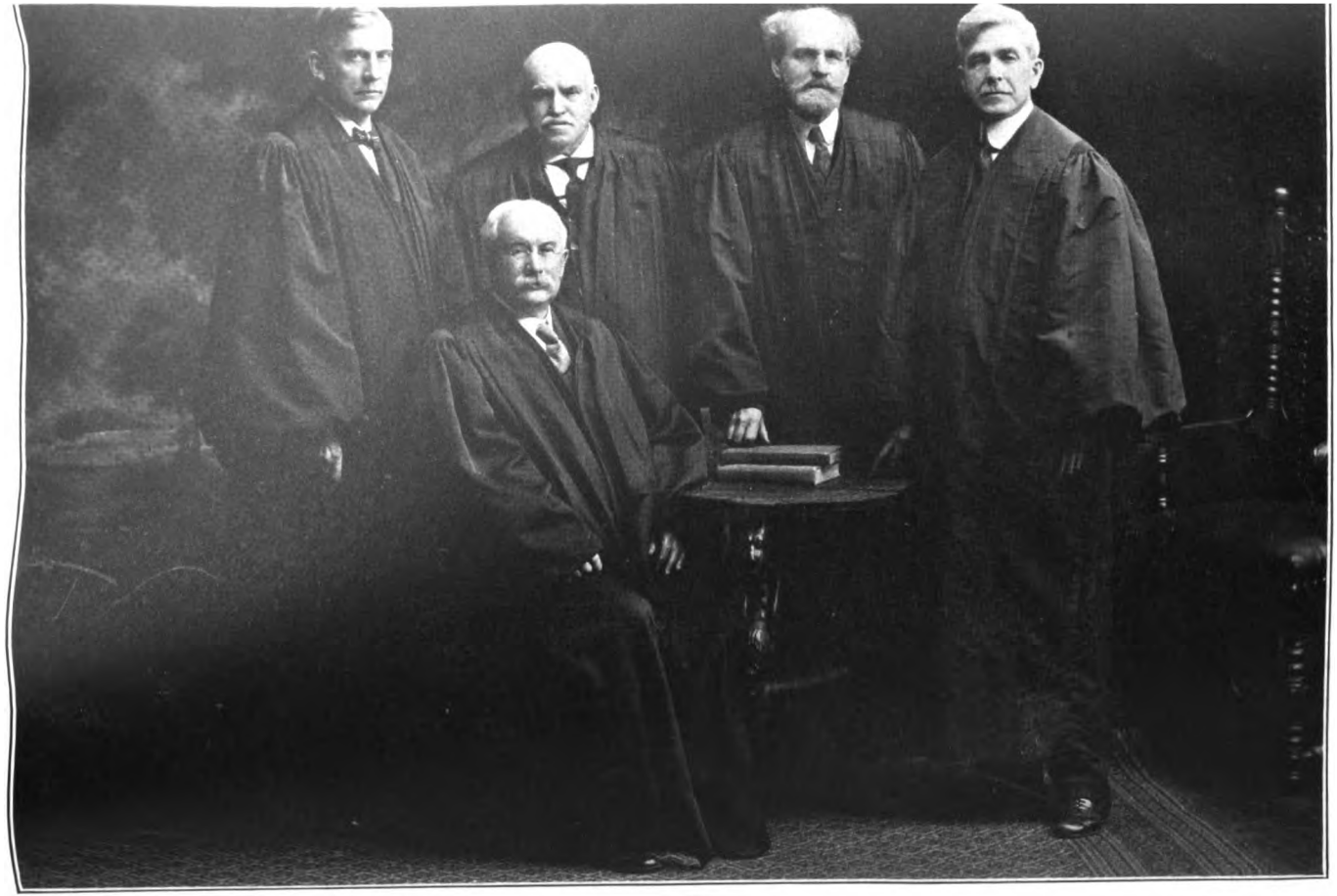

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NEW HAMPSHIRE SUPREME COURT- 1924

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MEMORANDUM. 81 N. H. Page 360.

Mr. Chief Justice Parsons having attained the age of seventy years on the third day of September, Nineteen Hundred and Twenty-Four, retired under the Constitutional limitation.

CELEBRATION OF THE BIRTHDAY OF

Frank Nesmith Parsons

September Third, Nineteen Hundred Twenty-Four

This anniversary was celebrated by the members of the New Hampshire Bar Association at its annual meeting, held at Manchester, September Sixth, Nineteen Hundred and Twenty-Four.

Chester B. Jordan of Keene, *Toastmaster.*

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Hon. William A. Plummer

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REMARKS

By Hon. William A. Plummer.

Mr. Toastmaster, my Former Chief and Brethren of the Bar:

I first became acquainted with our retiring Chief Justice thirty-five years ago the present month.

I came to Laconia in September, 1889, and began the practice of law with Hon. Stephen S. Jewett.

One of the first cases that I recall in which we were engaged was an action against the Democratic supervisors of Meredith for refusing to put upon the check list the name of a Republican. Frank Parsons, as we then called him, was associated with us in that case, and we succeeded in obtaining a verdict against the supervisors. I remember an incident in connection with that case, which shows that the late Chief Justice Blodgett, who tried the case, was not as austere and lacking in humor as his usual appearance indicated. When he rendered the verdict he wrote us a short note about the case, and at the end of it he wrote: "I have given you a verdict for $25.00, for from the evidence at the trial I judge that was about what votes were selling for in Meredith at that time."

I well remember the appointment of Judge Parsons upon the bench. There was considerable talk about his appointment in 1893 when Judge Wallace was appointed to succeed Judge Allen, but at that time he was in Governor Smith's council, and the Governor did not want to lose the services of his efficient councilor and it was not an opportune time for his appointment. He was appointed by Governor Busiel May 21, 1895, to fill the vacancy occasioned by the retirement of Justice Isaac W. Smith.

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It may not be generally known, but I happen to know, that the late Chief Justice Doe was strongly in favor of his appointment, and used his influence to accomplish it.

It will be remembered that Judge Blodgett, who also lived in Franklin, was then upon the bench, and it was said by some that Parsons should not be appointed because he lived in Franklin. In answer to that objection Chief Justice Doe said: "The choice of a justice of the supreme court is not a matter of location but of ability and fitness for the office."

Judge Parsons served as an associate justice upon the supreme court until May 13, 1902, when he was appointed Chief Justice by Governor Jordan to succeed his townsman and neighbor Chief Justice Blodgett.

His retirement last Wednesday by reason of age limitation when in full possession of all his splendid mental powers is universally regretted.

He served as an Associate Justice of the court seven years, and as Chief Justice twenty-two years, three months and twenty-one days. In all over twenty-nine years.

He held the position of Chief Justice of New Hampshire longer than it was ever held by any other man.

The only time he was ever absent from his duties upon the bench was a few years ago for about two hours, when he was somewhat indisposed, and his associates insisted he should not sit upon the bench during the argument of one case. A wonderful record of long, continuous and constant service, which it would be difficult to duplicate.

His able and convincing opinions are contained in the last thirteen volumes of our reports, beginning with the 68th. While some of his opinions, of course, are more able and exhaustive than others, they all attain a very high standard of excellence.

The reforms inaugurated by Chief Justice Doe have been fully maintained and supplemented during the administration of our retiring Chief Justice.

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I think the bar will bear me out when I say that Chief Justice Parsons has always endeavored to accommodate attorneys in arranging for the hearing of their cases. He never has taken the attitude that everything should be subordinated to the convenience of the supreme court, but that the court should be conducted with due regard to the convenience of the attorneys, and the rights of the parties litigant.

Under his administration no complaint can be made about the law's delay that we hear so much about in other jurisdiction. All cases argued at a session of the court have usually been decided and disposed of at the next session. Occasionally a case would go over, but as a rule after a case has been argued it has been decided without delay.

Upon his retirement there was not a case upon the docket which had been argued or submitted for decision that had not been decided and disposed of.

The expeditious course of justice in New Hampshire courts has been demonstrated on many occasions. I recall one of recent date where there was a public demand that a decision should be rendered as early as possible. The action was brought in the superior court, heard there, transferred to the supreme court, argued and decided in about one week.

If the attorneys and the parties desire and seek a speedy determination of their cases, the courts of New Hampshire, I feel sure, will co-operate with them to accomplish that result.

My term of service upon the supreme court covers the last eleven years. During that time the relations between the different members of the court have been most agreeable and pleasant. Nothing could exceed the kindness shown to me by all members of the court, and especially the consideration and kindness of the Chief Justice to me upon all occasions and under all circumstances is beyond the expression of words.

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In other words we have been a happy and usually a united family.

Of course we have not always agreed, and although our discussions have been earnest and frequently zealous and animated, but never angry or acrimonious, every member of the court has always been ready and willing to listen patiently to the views of his associates and to give them due weight. The real object of our discussions has never been lost sight of, namely, to reach a correct decision.

It is needless to say in this presence that the court will suffer a tremendous loss by the retirement of Chief Justice Parsons. His splendid natural ability coupled with his great knowledge of the law and his familiarity with New Hampshire decisions, which is greater than that of any other man, and his long experience upon the bench have made his services invaluable. He has been to the court "That tower of strength which stood four-square to all the winds that blew."

If I were asked to name one talent which exceeds all his other fine qualities, I should say his wonderful resourcefulness.

It would, indeed, be a difficult situation that would defy satisfactory solution at his hands. And when he found the key to a seemingly insolvable legal problem, and gave his reasons therefor, it usually appeared so plain and clear, that it seemed very strange that it had not been thought of before.

A great change is taking place in the personnel of the court.

Next January we shall lose by retirement, on account of age limitation, Judge Young. A man who has a great store of general information and a splendid knowledge of the law in general and New Hampshire law in particular. His long and efficient service upon the courts for twenty-six years has been of great value to the courts and the state. His kindly and friendly disposition and his great desire to

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aid and assist his associates in every way possible has endeared him to them, and his retirement will be deeply regretted by them. It is a fact well known among those who really know John Young that he is never entirely happy unless he is doing something for a friend.

It is fortunate for the state that a man of the long experience and great ability of our new Chief Justice could be secured to direct the work of the supreme court.

No man in New Hampshire is so well fitted by experience, knowledge and ability for the position of Chief Justice as the one who was chosen. Under his leadership we shall hope and strive to maintain the standing of the court. And the bar can be of great assistance to the court in achieving that result.

In your briefs give us the best there is in you and never fail to argue your cases orally before the court. The importance of an oral argument cannot be over-estimated. And besides it gives us some opportunity to get acquainted with you. A valued privilege of which we as members of the supreme court are much deprived of.

With your aid and co-operation we shall do our best to reach correct and right decisions, "as God gives us to see the right."

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REMARKS

By Albert O. Brown.

Mr. Toastmaster, Judge Parsons and Brethren of the Bar:

Some years ago Elijah M. Topliff, of vivid memory, was cross examining witnesses in court as he delighted to do. He asked the first, among other things, how he got in touch with the plaintiff's counsel. The witness replied he had received a postal card from me. "Got a post card from Brother Brown?" said Topliff. And to each of a dozen men he said in that insinuating and irritating tone which he alone possessed, "Did *you* get a post card, too?" The answer was always in the affirmative. Finally as the last question to the last witness he put the then familiar inquiry and the reply was in the negative. "Didn't get any post card?" exclaimed Top, in surprise, and the witness answered "No sir, I didn't." As he stepped down from the stand and passed along in front of the jury and behind my chair he leaned forward and whispered, "Mine was a letter."

This ancient anecdote, of course, is not necessary to these proceedings but it is as pertinent as many introductions and it enables me to say less abruptly than I otherwise could that I received a letter—not a post card but a letter— from the distinguished president of this association commanding me to appear here as an "old-timer" and to speak as such. I had no power to resist. So if I utter a slander do not blame me. Chief Justice Peaslee set the train of events in motion and under the doctrine of the Squib case, suitably enlarged for the occasion, he and he alone is liable.

Forty years ago when Jerry Doyle, James F. Brennan, Scott Sloan and I were admitted to practice the members

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ALBERT O. BROWN

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of the examining committee were Jeremiah Smith, William S. Ladd and William M. Chase, all eminent alike at the bar and on the bench. They have gone to their reward. One by one the brighter and the dimmer of the legal lights in the several counties have gone out until scarcely any of that time remain. There are only two or three who antedate us here tonight. We as young attorneys joined one generation of practitioners and as old men are withdrawing from another. The judges then in office, with their great chief justice at their head, have passed away. Even the court which they dignified and adorned has been abolished and others created in its stead.

There are but few men now living who practised in the court presided over by Chief Justice Doe. One of them is our guest of honor. I first saw him in that court presenting an argument that commanded the close and undivided attention of the judges. There is but one man now living who sat upon the bench with Chief Justice Doe and he is the same guest of honor. During the period of their contact, and especially during the ten months of their joint service, the older man did much to impart to the younger, whom he regarded as his ultimate successor, the store of wisdom which was his by nature and to which he had added much in the course of a long and varied judicial experience. It was by this means, among others, that an enlightened and simplified system of jurisprudence was safeguarded and transmitted for future administration and future improvement.

The appointment of Frank Nesmith Parsons to a New Hampshire court was an exceptionally appropriate act. By birth, by inheritance, by breeding, by education, by residence and by service he was a New Hampshire man in the fullest sense of the term. Born in Dover, educated at Pinkerton Academy and Dartmouth College, he taught school for several years, read law with distinguished practitioners and came to the bar in 1879 at the age of twenty-six.

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He located in Franklin and for sixteen years, in partnership with another and alone, led the dog's life of a practicing attorney. Meanwhile he achieved a state wide reputation for sound and persuasive argumentation in the law court. Naturally a great variety of important cases, especially those involving difficult questions of law, were entrusted to his care. He reported the decisions of the supreme court contained in nearly two volumes of our law reports.

During this period he did not decline such public responsibilities as he was invited to assume. He found time to serve on the local school board, in the constitutional convention of 1889 and as a member of the executive council. When Franklin became a city it naturally and almost inevitably turned to him to be its first mayor. Other positions of obligation and trust, public and private, fell to his lot during the busy years of his practice. This was the preparation, this the foundation for a judicial career of long duration and of superior service.

When Judge Parsons became a member of the old supreme court he was in the prime and vigor of his manhood, his mind developed by study and thought and stored with a knowledge of many subjects, especially those relating to the law. Naturally the other members of this court of seven judges welcomed the accession of a man in middle life, of industrious habits and thoroughly equipped for the place. When it is recalled that all the trial and all the law work of the state devolved upon this one court it will be seen there was enough to do. It is still a wonder how it was accomplished. It required great bodily strength and great mentality "to ride the circuit" from Colebrook to Keene and Portsmouth on slow trains, to stop at indifferent hotels, to preside in court all day and work out of court half the night. Yet that is what the new appointee did and what the older judges approximated. The court was short handed and overworked. The theory and practice of short

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hours and high wages had not been developed. The salary of the judges was $3,300. After six years of such experience the dual court law of 1901 relieved Judge Parsons from trial work and since that time his whole service has been upon the law court then established and now existing.

The appointment of the new judge met the approval of the bar and of the public. There were many predictions of a long and distinguished career for him as a jurist. But however generous these were it is not likely that any of them equalled the fact. It could scarcely have been anticipated, even by the most confident of his friends, that, being junior to six judges, he would in the short space of seven years become chief justice of our highest court and would hold that position for a longer period than any preceding chief justice had held his office and until he reached the constitutional limit of seventy years. He, himself, could hardly have entertained a hope so remote.

Judge Parsons was made an associate justice of the old supreme court in May, 1895. An earlier vacancy had occurred which it was generally expected would be filled by his appointment but the governor was of the opinion that he could ill be spared from the council and although he, himself, was desirous of judicial preferment his sense of duty was such that he decided to serve out the term of office for which he had been elected at the sacrifice of two years on the bench. As it was he served as an associate of four chief justices in rapid succession, more than half of the court as the court then was. He was an associate justice of the new supreme court for fifteen months before he became its head in 1902. It is from this time that his most notable service dates.

New Hampshire has had fourteen chief justices of what, under various names, has been in fact the law court. Of these men, rare ability and length of service enabled three to become distinguished in an exceptional degree. William M. Richardson served twenty-one years and nine months.

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He laid the foundations broad and deep of our judicial system. Charles Doe held the office nineteen years and seven months. It was his work to reform and modernize the law especially with respect to procedure. Frank N. Parsons has just retired from the position after an incumbency of twenty-two years and two months. He has preserved unimpaired the rich heritage of law derived from his predecessors and improved it as opportunity arose and need required.

The constructive and in every way admirable work of these three long term jurists affords a defense, if any be needed, for our method of appointment of judges to serve until seventy years of age unless sooner removed by impeachment.

The early work of Judge Parsons upon the law court was marked by a tendency to protest against the view held by Judge Doe that about every tort case should be submitted to the jury. He believed the plaintiff should produce substantial evidence and he voiced that belief in opinions notable for their argumentation of questions of fact. In accordance with this contention it long since became the settled law of the state that a plaintiff must prove his case in tort as well as in contract. He wrote the opinion sustaining the original inheritance tax statute, placing the conclusion upon the ground that some inequality is necessarily created by any inheritance tax. In his last opinion he defines the limitations upon such inequality holding the first section of the law of 1919 to be unconstitutional. The declared law of the state upon this important subject is substantially all his work.

From the foregoing it might be inferred that Judge Parsons is a conservative and such he has been called. It is not believed he objects to that designation. But in fact he is progressive in the sane sense of that word and has written many forward looking opinions. In an early case he fully extended the rule that when one assumes to act he is bound

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to use care towards all to be affected by his action. In another case he held that the insurers of an insolvent employer may be compelled to satisfy the judgment of an employe and will not be heard to say that merely because the assured can not pay they will not do so. In one opinion he decided that the acceptance of a part of a debt in discharge of the whole bars a subsequent suit for the balance, thus overturning so far as this state is concerned the law which had obtained in the principal courts of England and America for three centuries. In another opinion he laid down the doctrine that a negligently inattentive plaintiff may recover from a defendant who knew the plaintiff's situation. This principle may be as old as Davies v. Mann but it had not been so clearly established in New Hampshire as to command the concurrence of more than a majority of the judges. Many other cases might be cited and doubtless many that better illustrate my point, for the opinions of the chief justice are found in no less than thirteen volumes of our reports.

These opinions are without exception well reasoned and their conclusions, so far as they rest upon precedent, amply supported by citation. They are also attractive in form. Judge Parsons has always written freely and easily but he has had none of that tendency to the use of unguarded and inaccurate statements which is the usual accompaniment of so great a facility in expression. The extraordinary acuteness of his mind and the rapidity of all his mental processes have prevented that. If it is difficult to select his best opinions it is because he has written so many good ones. In fact it is in the uniform excellence of all his opinions rather than in a few of outstanding quality that his future reputation will safely rest.

Judge Parsons did few unusual things and nothing that bordered on the spectacular. He presided with dignity and grace. Towards his associates and towards the attorneys who appeared before him he used great good judgment

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and tact. He held his court well together. There are not too many dissenting opinions. He himself seldom dissented and but two of his minority opinions appear in the reports. He and his court always enjoyed the confidence of the people. Indeed it may be said that during no period in its history has the highest legal tribunal in New Hampshire been held in greater esteem than the supreme court under the retiring chief justice.

As I have come to the end of my testimony I ought, like a good witness, to stop. But I cannot refrain from a glance ahead. I cannot repress the inquiry of what will the judge do in his retirement. While there are many other things to occupy his time, it will be too bad if his pen is idle. The legislature needs his counsel especially in regard to the revision of the statutes. He can revert to any one of his former vocations or avocations in the city of his residence. And he does not need to be told that the banks, with two of which he has official connection, afford convenient asylums for retired judges as well as unsuccessful lawyers. But in whatever direction he may turn it is hoped that he will not be too busy to remember that his friends are fast and true, his fellow citizens appreciative and grateful.

To you, Judge Parsons, who filled the office of chief justice so long, and always in accordance with its best traditions,—to you, in your judicial capacity, I desire to say goodby and farewell and in doing so to employ the language a little old French Canadian trapper up in the Saskatchewan region was accustomed to use whenever a guest left his camp: "May you always have a safe tent and no sickness as you journey. May you always have a cache for your provisions and provisions for your cache. May you never find a tree that will not yield her sap, or a field that will not grow grain. May your bees never freeze in winter. May their honey be rich and heavy, and may the comb crush in your teeth like the new frozen snow. May you have a heart like the morning, and may you come slow to the four-corners where man says 'Good Night'."

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PAUL J. DOYLE

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REMARKS

By Paul J. Doyle.

Mr. Chairman, Honorable Frank N. Parsons, and brother members of the New Hampshire Bar:

I was asked to make a few remarks this evening, as representative of the younger members of the New Hampshire Bar, telling you the impressions that I have received from my appearances before the Chief Justice Frank N. Parsons.

I shall never forget my first appearance in our Supreme Court with Honorable Frank N. Parsons presiding. As you all know the Chief Justice talks in a rather deep voice that to a novice on his first case is rather disconcerting. I had worked hard on my brief and had rehearsed a speech that should have taken at least thirty minutes. I was talking about five minutes only, and expounding some theory of law which must have struck the Chief Justice as rather unique, for suddenly he began to ask me a question. To save my life I couldn't understand what he was asking and with grave fear I asked him to repeat, which he did, but I was no better off. I couldn't catch even one word of it. If ever a young lawyer felt lost, I certainly did. I did not know whether to say "yes" or "no", and to ask him to repeat for a third time I felt would be the lightest form of "lese majeste". Finally I took a deep breath and said "yes" on the theory it is better to agree than disagree with the powers that be. That ended my first conversation with the Chief Justice and also my first oral argument before the Supreme Court, because I couldn't remember a word of my carefully prepared argument and so I retired to my seat.

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However, I soon learned that in Chief Justice Parsons the younger members of the bar had a real friend and that his questioning of the different points of law advanced always brought out clearer some point of law which was more important than the young lawyer realized, or brought the beginner back from some immaterial point to the real issue involved.

In closing I can sum up briefly the impressions I have received from our Honorable Guest by saying there is no man I would rather plead a cause before and accept his judgment than the Honorable Frank N. Parsons.

REMARKS.

By Hon. Louis S. Cox of Massachusetts.

Mr. Toastmaster, Mr. Chief Justice,
Ladies and Gentlemen:—

Having occupied so much of your time this afternoon, I should hesitate to say anything at this time were it not for the fact that you are here primarily to do honor to your retiring Chief Justice.

What a sense of satisfaction must be his when he realizes that all these years of faithful service have not been in vain! During that time, apart from the busy world and yet of it, he has been quietly but definitely carrying on the work of his great Court, ever mindful of the solemn obligation imposed upon him.

It would seem altogether fitting to congratulate him upon the successful completion of his work, to express to him the appreciation which is his due for the untiring and unselfish devotion which has characterized his labors. But it would

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seem that the people of New Hampshire ought rather to congratulate themselves that for so long a time he has been in their service, faithful to his trust, ever watchful and jealously solicitous for their rights and privileges, working not for the present but patiently building with a clear vision for the future, ever holding true to the sound principles of the great Common Law and doing his great part in perpetuating the institutions of free government as the Founders meant them to be.

Such, in part, has been his gift to the people. For such they must be grateful.

In time to come his name may be forgotten but the results of his labors will live on. And as he steps aside he well may pridefully pass to his worthy successor the torch blazing bright with the flames of Logic, judgment and sound common sense.

It has been very pleasant for me to come back to the City and State of my birth and I count it a privilege to join with you on this occasion and to bring to your honored guest the felicitations of the Bench of the Commonwealth of Massachusetts.

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EXTRACTS FROM REMARKS

By Samuel L. Powers of Massachusetts.

Mr. Toastmaster:

Before closing my remarks I desire to extend my hearty congratulations to Judge Parsons. For more than fifty years you and I, Frank, have been traveling along the broad highway of life. We have not at all times been traveling abreast, or even in the same direction, but we have been near enough to get frequent glimpses of each other, and to be greatly interested in the progress that was being made.

It has never been my good fortune to see you clothed in your judicial robes, or to listen to your wise interpretation of the law, but I am sufficiently familiar with your character and attainments to believe that you have during your long career upon the bench rendered public service of the highest order in the administration of justice. While you have been performing this service, which requires exacting application and close study, you have not lost or even lessened your interest in human affairs. You have been able to prove that it is possible to be a learned and able judge, and at the same time a public spirited citizen, interested in everything that pertains to the welfare of society.

I cannot imagine any position more to be desired than to be at the head of a strong judiciary of a sovereign state. It must be a supreme satisfaction to be in a position where you can reach your conclusions without being influenced by bias or motives which so often affect mankind, and at the same time to be conscious that your decrees will be enforced without respect of persons.

I confess I am not in sympathy with that provision in your state constitution which directs you to discontinue your public service at a time when you are best fitted to

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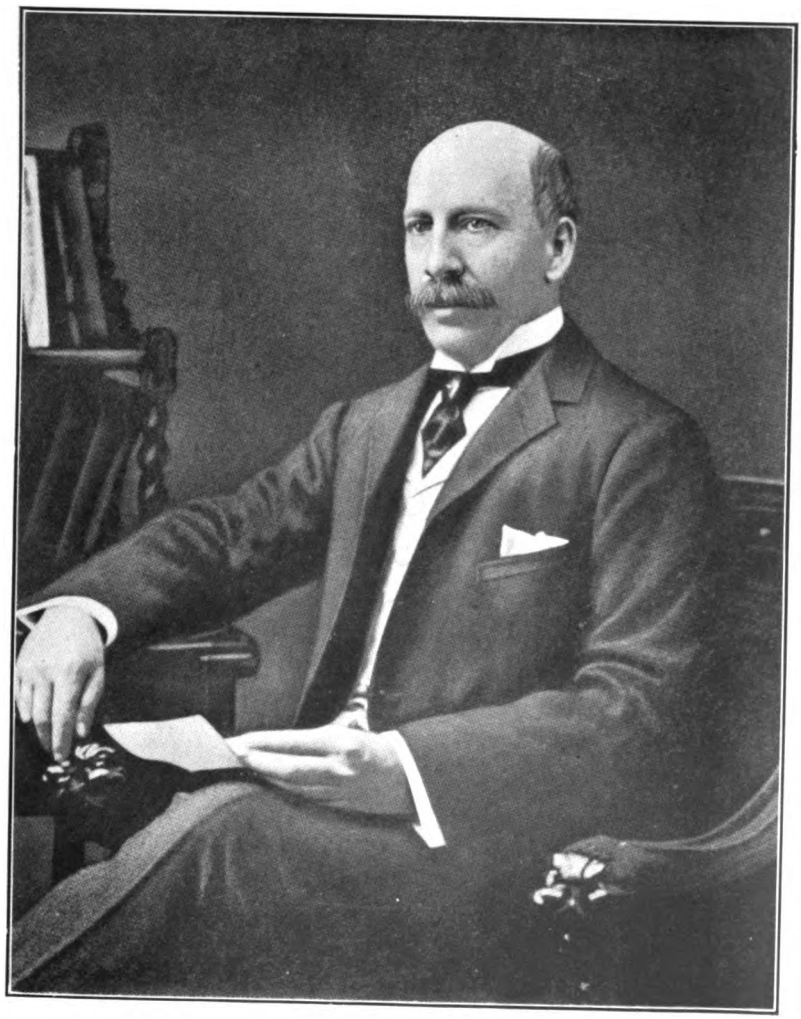

SAMUEL L. POWERS

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continue it. I cannot quite conceive how it was possible for a constitutional convention which assembled something like one hundred and thirty years ago, to have foreseen that you ought to be disqualified from further service for no other reason than that you had arrived at your seventieth birthday. That ancient convention could not have foreseen that your life of sobriety, of plain living and high thinking, would prepare you to continue your judicial career until you were at least ninety years of age.

This drastic edict has forced you to lay aside your robes of office and to become one of us again. As you slowly approach the sunset of life, which awaits us all, may the many years that you still hold in your embrace be filled with comfort and happiness, and that ever abiding joy which comes from the consciousness of a life well lived and a great work well performed.

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RESPONSE

By Frank N. Parsons.

A well beloved poet of New England, at the fiftieth anniversary of the graduation of his college class, chose as the title for his verse the salute of the Roman Gladiator facing death in the arena, "Morituri te salutamus,"—We who are about to die salute you.

One fresh from the same anniversary, constitutionally adjudged too old for judicial service, might perhaps be excused for following in the same strain, speaking in reverent tones of the few days remaining until he should wrap the drapery of his couch about him and lie down to pleasant dreams. I say one might be excused for such thought, but the thought is not mine. I have been asked what I thought of the constitutional provision which removes me from office. Now that it applies in my case, the inquiry is perhaps suggested by the old saw, "No rogue ere felt the halter draw with good opinion of the law." But a man may respect the law though it affects him injuriously. There may be cases where a judge may be or may be thought to be, to some degree, incapacitated by the effects of age, and the suspicion is nearly as fatal to his future usefulness as the fact would be. He would naturally be the last to suspect his disability. To suggest resignation for such a cause would be a delicate task. Especially, when, as under our law, withdrawal from office might be followed by total loss of income and then if there were doubt of competency to act there might be doubt of competency to resign. Such a case actually arose in recent years in a not distant state.

A law almost invariably acts harshly in some individual case. It is made as a general rule. How has it worked?

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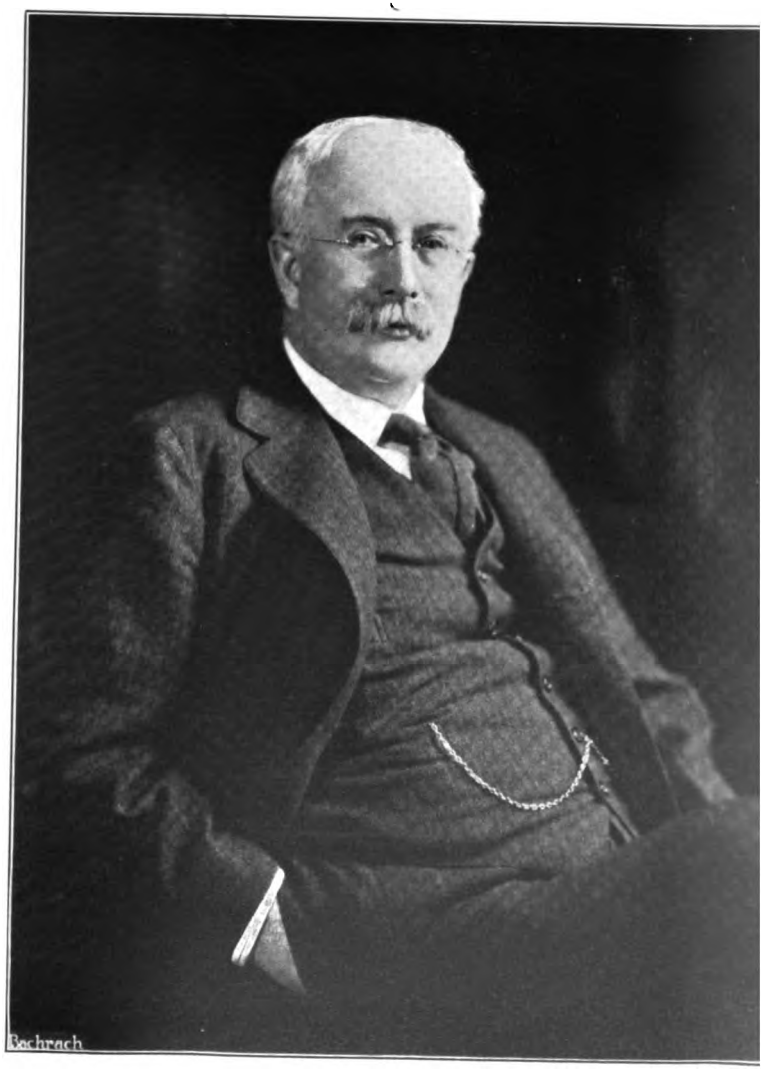

HON. FRANK N. PARSONS

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Since my recollection, say since 1870, four before this time have fallen by constitutional decree. Smith, Clark, Chase and Walker, and I am not violating any confidence in saying that only one of the four was really fit to continue to hold judicial office. The judicial life is somewhat strenuous and only a very few have the strength and vitality to give opportunity to question the wisdom of the constitutional rule. The rule is a wise one. There is no danger it will be changed as the cases for its application are so few.

I queried whether I might not make a precedent and prove to be the first chief justice who had vitality enough or took life easily enough to overrun the constitutional limit. I have seen a statement in print that such was the fact. The record does not so read. Chief Justice Perley was retired under the constitution in 1869, but he was twice chief justice; he took a vacation from the office of five years from 1859-1864. In this way perhaps he gathered strength to hold out for three score years and ten. We had at one time a practice of getting new judges whenever power changed from one political party to another. This was first done in 1813. If the judges then in office had been strong and able men, the movement might not have been successful, but the old judges were weak and the new appointees strong and the principle being established, when the opposite party came into power three years later, the precedent already laid down was followed then, and in 1855, 1874, and 1876. Under the constitutional power of the general court to erect and constitute judicatories and courts of record and other courts, it is difficult to escape from the conclusion that the power exists to establish such bodies as courts, with such powers in each as may be thought wise. But the provision for the permanence of judicial tenure conflicts with the idea that the Legislature may terminate judicial title in the individual by abolishing the office held.

Probably the correct conclusion is the rule followed in 1901 when the present judicial system was adopted. The

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system was changed by abolishing one court and creating two, but the existing judges were all reappointed; establishing the rule that the Legislature may change the duties but the personnel of the courts can not be changed.

It is not probable any political party will again attempt to change the courts for the sake of political control. In fact, we have now and have had since 1913, exact political equality in the courts. Five of the judges are supposed to be Democrats and five Republicans. At least we label them as we understand their political preference to have been when appointed. What political principles each now approves is a judicial secret, which cannot be pierced even by their associates.

This political device cut off some judicial careers as chief justice, which otherwise might have required constitutional aid to terminate them. Chief Justice Jeremiah Smith lost his office thus in 1816: Chief Justice Woods in 1855; Sargent in 1874 and Cushing in 1876. But in spite of this practice the seat of the chief justice has had much more than temporary occupancy. Judge Richardson in 1816 began our system of reports and three men have held the office for over one-half the time since. Richardson for nearly twenty-two years; Doe nearly twenty, while it took over twenty-two years for the constitution to get the better of the last incumbent: sixty-two years out of the one hundred and eight. In the provincial court before the adoption of the constitution, Theodore Atkinson was chief justice twenty-one years.

Not being willing to address you under the poet's slogan that I am about to die I need another and I select from a more ancient author this: "Except a man be born again, he cannot enter into the Kingdom of Heaven," which being translated for the benefit of those unfamiliar with the authority quoted means: A judge unless he removes, or is removed, from the bench cannot enter the fellowship of the bar.

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There is truth as well as wit in the remark, said to have been made by a member of the bar at a meeting such as this, when he said, "We are all lawyers here—except the judges." Both the judge and the lawyer may be learned scholars in the law, but the work is different, its object different and the methods of thought and expression different. Good lawyers when coming to the bench usually require time to get the hang of the schoolhouse; the better the lawyer—the more active his practice, the greater the wrench. To one coming back to the bar after an absence of thirty years, the change is as great as when you shut up an active practitioner within the walls of a single court room. Having been graduated from the bench, it will not be strange if ignorance of the uses and practices of the new old job should for a time annoy.

Having listened attentively to what has been said here this evening, the impulse of thirty years' training is for me to now give my opinion upon the subject.

When the court was reorganized in 1874 the act provided that in each case each judge should file an opinion. The rule was followed *in extenso* for a time, but before long the judges discovered nothing in the statute as to the length of the concurring opinions and you will find after each opinion in full, the entry, if the opinion was by the chief justice, "Ladd, J. I concur, Smith, J. I concur."

Following the judicial habit and this example, I might answer to all that has been said, "I concur." But I am no longer a judge. A member of the bar has to do more than concur to get anywhere and it would be rather ungracious to respond to all that has been said by simply saying "that is so," and I fear I should want to write some explanatory words if I were to admit agreement to it all.

I have been a judge, I am not one now. I look to the future, not to the past, and I want to consider all that has been said rather as a welcome to the bar and an incentive to future effort rather than as praise for what is now past.

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But I thank you for the words and the kindly spirit in which they have been uttered.

When a new man has come into the court from the bar, we have always felt ourselves entitled to his knowledge of what the bar felt and thought. In fact, when I joined the court, Judge Doe put that very proposition to me. How in the minds of the bar could the process and practice of the court be improved. Coming to you now from the court I feel I have the right to tell you anything I can about the court and its methods which may aid you in your work. But first, perhaps, I better, before I am chargeable with disclosing secrets of the prisonhouse, take leave of my old associates. The association we have had has "gone west," never to return.

When I joined the court, Judge Doe told me the New Hampshire court was an entirely democratic institution. It has always so continued, each member whether chief or associate has one vote and no more. As I have known it, it has been a fraternal organization as well. However violent the discussion, and you would be astonished to learn how insistent men may become in discussing purely legal questions in which they have no personal interest, there has never been the slightest ripple of personal antagonism. Every one has been at liberty to express his views with all the vigor of language or voice he could bring to his aid, and no one could take offense because none was intended.

Some years ago I said to the bar that in my service as judge, I could not recall a word of discourtesy addressed to me by any member of the bar. I can say the same today and I can also say that in all my recollection of intercourse with my associates, I cannot recall a single unpleasant feature.

I have been reading in the press rather complete notices which with a single line added will make complete obituaries. In one of them I noticed it was said, I was a glutton for work. I do not think that is quite true of me, but it is true of Judge Peaslee, our President who sits in my place.

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Judge Peaslee has a chance, if he lives, of exceeding the record of Meshech Weare for continuous service. Weare served thirty-five years. He was not only a judge but held other offices. During the Revolution he administered simultaneously the highest offices in the state, legislative, judicial and executive.

Peaslee is equally competent, a tireless and fast worker, the only man I ever met who equaled him in quickness of comprehension was Judge Doe. Beside writing all our difficult opinions in the last year or so, he has been revising the laws, building a digest, bossing the reporter and giving law lectures. I want to impress on the bar that the chief justice cannot do all the legal work in the state. I have urged him to go slow, because I want to congratulate him on his graduation ten years from now, which I certainly will not be able to do unless he allows a little of the inertia which may have prolonged my life, to overcome him. The bar must take hold and do some of this work if the days of our chief justice are to be as long in the land as the constitution permits.

Then there is he who might have been Chief Justice Young, soon to join me and you at the bar.

Some years ago I attended a Dartmouth banquet where I learned that the eloquent speaker who has just sat down had made nations mourn by refusing a judgeship. John Young grieved us all by refusing to be chief justice; just why, I could not think, until one day I recalled the celebrated sonnet about the purple cow where the author says:

"I never saw a purple cow
But this I know right now,
I would rather see than be one."

John could not say he had never seen a chief justice, but the thought of his mind was, I have no doubt, "I would rather make than be one."

He could be chief justice only a little over four months, but he could sit round for ten years and think, "I made

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Robert chief justice." Of course Peaslee would have been chief justice next January anyway, but Judge Young never lets a chance go by.

Then I must bid good bye also to Judge Plummer. I need say nothing about him, because the courtly gentleman has been on exhibition this afternoon. I would like to tell you something about Judge Snow, but at large expense this spring, he had himself entirely made over, took his new self across the water and returned a new man. I have barely seen his remodeled self and I must leave you to find him out.

And now, my associates and friends in the court for nearly thirty years, with deepest and most heartfelt affection, I bid you good bye. May the rest of your service be as agreeable and successful as the years I shared with you. Good bye.

Now I want to tell the bar a few things. The idea seems prevalent in some quarters that the court is run like a one man car, one man to a case. I have had occasionally requests to lay something before the judge who had the case. There is no foundation for the idea of one man to a case. You always have had and always will have, unless for some special reason, some one may be disqualified, a full crew on every case. We have tried to do team work where each man should contribute something to every decision. The final opinion that is given out represents often, as it should, the ideas and work of all the court. To make sure that you get it, do not forget to have oral discussion of every case. Cases that are discussed in the court room are usually immediately discussed vigorously and extensively in the consultation chamber. If no discussion is had a case submitted on briefs may not get so thorough attention; the written record may be misunderstood. The court has plenty of time. They want to hear and will hear you if you keep at it. Don't give up because one judge appears sleepy and another to watch the clock. As nearly as I can estimate, sub-

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stantially eighty percent of the cases so far are orally discussed. All should be.

It is also true that in the same percent of cases submitted at one session the decision has been announced at the next session, thirty days later. The work has been kept up, and I am proud of the fact, which has already been referred to tonight, that I leave the bench with nothing before the court for decision. No case, or motion even, which has been submitted, remains undisposed of.

The one man idea doubtless came from the single court where the judges did not have the time the court now has. Then cases were assigned to two men, one who was to prepare the opinion and the other who called his assignment a second, to give special attention to that case after he got his own out. The court then met twice each year and spent a week reading to each other the opinions that each had prepared. The cases were then decided by vote after more or less discussion. When the present system was established the rule was made that each member of the court should regard every case submitted not specially assigned to him as a second assignment. The practice has been for each judge, as soon as he had put his views in shape, to send a typed copy to each associate. Then often would ensue a vigorous epistolary discussion before the meeting of each session. Often in important cases opinions have been written out by each member of the court. Sometimes more than one has been printed, but usually it has been found possible to combine the best in each into one judicial expression.

Much more I should like to say of the New Hampshire supreme court, a seat on which I regard as the most agreeable judicial position in the country.

Aside from its sessions in a single place, its occupation of as beautiful a court room as is to be found anywhere, the cordial friendship which has always existed and doubtless will always exist between its members, the work is not so burdensome that it is impossible as must be the case in

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many courts to give all the time useful to each case. That is the summit of pleasure in any occupation. Work to do and time to do it in.

My term of service has been long though it seems short looking backward. The time almost equals the years usually assigned to the life of a generation. Since I went on the bench men have been born, grown up, entered the profession and become successes therein.

A most interesting study has been had in the observance of the careers of men who at their first appearance exhibited some evidence of the diffidence and embarrassment which Brother Doyle has told us tonight he felt when he first addressed the court. As the same men reappeared from time to time it has been a pleasure to note the ease of manner, facility in speech, and accuracy in discussion developed in many. Some of them have become finished forensic orators almost equalling Brother Doyle as he proved himself tonight.

I ought to say much more in grateful appreciation of the honor extended me by naming this meeting a celebration of my birthday. I wish I had the eloquence many of you possess to express my feelings but thirty years grind at written expression has destroyed whatever grace of the spoken word I then had and prevented the acquisition of the facility which might have come by practice of the art for that time.

I appreciate it all and thank you.

Now a word in acknowledgment and appreciation of the honor to us by the presence of our two guests from Massachusetts. Born and bred in New Hampshire, they both fled our rugged soil and the fierce competition of our bar for the milder terrain of our neighbor on the south, where I am told much richer pecuniary reward follows professional success.

We regret we lost them so early but claim for our state a share in the honors Massachusetts has given them. I thank Mr. Powers—Sam Powers—for the congratulations he has

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brought here sweetened with the recollections of a friendship of over fifty years. Judge Cox, I thank for the felicitations of the Bench of Massachusetts. We owe much to that Bench, enriched as it has been in the past and is now with New Hampshire brains. We took our Constitution almost verbatim from Massachusetts, then it was as good as Massachusetts had. Because we have done so little to change it, I think it is now better than what Massachusetts now has. The provision which ends judicial life at seventy we did not copy from Massachusetts. That was introduced in 1792 and good or bad is our own child. It is interesting to note that the proposition as first introduced in the convention and reported by the committee of reference placed the limit at sixty-five years. So we might have had these exercises five years ago. Again I thank the gentlemen from Massachusetts.

Judge Cross whom we all loved and now remember with deep affection had a farewell speech with which he touched our hearts as he closed these meetings with his good bye and good night.

All must go west in time, but nothing is gained by looking that way. Looking not backward but forward to the morrow, facing the East for the first rays of the rising sun, I had planned to close with a salutation which at most of our meetings would have been appropriate in time as in spirit. Under the newer order and the efficiency of our new Chief Justice, the clock lags behind the spirit I sought to express, but, nevertheless, I will say not good bye or good night, but good morning.

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IN MEMORIAM

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HARRY J. BROWN

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HARRY J. BROWN.

By Benjamin W. Couch of Concord.

He had a multitude of friends, and not an enemy in the world. Such can rarely be said of one who has been actively engaged in the practice of law in a political center for a period of twenty-five years. But that is what was said by the people of Concord to each other when it became known on November 11, 1924, that Harry J. Brown had departed to return no more. Born in Wentworth on the second day of March, 1873, son of James B. and Eva Merrill Brown, he came to Concord in 1888 to live with his grandfather while he attended the Concord High School, from which he graduated in 1891. He graduated at Dartmouth College in the class of 1895, and while in College he became a member of Sigma Chi fraternity, Sphinx Senior Society, was an associate editor of The Dartmouth, president of his class, played on the varsity baseball team, and was a prominent and much beloved member of the college group of students. Following graduation, he was appointed to a position in the Department of Agriculture at Washington, at the same time pursuing his studies at the Law School of Columbia University, which gave him the degree of Bachelor of Laws in 1897 and that of Master of Laws in 1899. In the latter year he returned to New Hampshire and was admitted to the bar of the state, of which he had since continued to be a member, practising in this city. For four years he was associated with the late Attorney General Edwin C. Eastman and former United States Senator Henry F. Hollis, but subsequent to 1903 he had no partner. He was very successful in his profession and for several years was legislative counsel for the Boston and Maine Railroad. A Republican in politics, he sought no preferment for himself, although he served two years in the city council and was the efficient secretary of the

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Republican State Committee in the campaign of 1908. In 1919 he was appointed to the Judgeship of the Concord Municipal Court, to the duties of which office he gave conscientious and painstaking service to the time of his incapacity shortly prior to his untimely decease.

Judge Brown was a member of all the local Masonic bodies, including the Shrine, and the Consistory, and was a member of the Wonolancet, Snowshoe and Bow Brook clubs. He is survived by his mother, his wife, Mary K. (Bride), to whom he was married November 21, 1907; a sister, Mrs. Charles A. Young, of Waterbury, Vermont, and a brother, Dr. David R. Brown of Lyndonville, Vermont.

Throughout his active career he successfully carried out his policy of peace. Peace, when obtainable with honor, suited his quiet and kindly disposition, better than the sometimes unavoidable, unrelenting warfares of his clients. It can be said of him that he would lift harder for his friends and for his clients than he would for himself. Harry J. Brown was a lovable character, maintained a beautiful and always happy home, and his decease in the prime of his life is a great loss.

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HENRY A. CUTTER

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HENRY A. CUTTER.

By John R. Spring of Nashua.

Henry A. Cutter was born at Peterborough, October 27, 1857. He was the son of Edward S. and Janette Swan Cutter. He was a descendant of the Rev. Peter Hobart, who was a graduate of Oxford University, the first minister to settle in Hingham, Massachusetts; and of William Prescott of Revolutionary fame.

His parents moved to Nashua, in 1864, where he received his early education. He later attended the Boston English High School, and in 1879 graduated from the Boston University Law School. He was admitted to practice at the Hillsborough County Bar in March, 1880. He was in partnership with his father at Nashua until the latter's death in 1903, and since that time maintained his own office.

He always took an active part in the business and civic life of the community. He organized the first Board of Trade, was for many years director of the Peterborough Railroad, and President of the Board at his death; he was for many years a trustee of the Nashua Public Library, being Clerk of the Board at the time of his death. He was a member of Rising Sun Lodge, A. F. and A. M., of which he was Past Master. He was instrumental in the organization of the Masonic Building Association, and for many years Clerk of the Board. He served one term in the New Hampshire Legislature. He travelled extensively in Europe and was an entertaining lecturer on his experiences. By nature he was scholarly in his tastes and enjoyed historical research. He enjoyed thoroughly his connection with the Nashua Public Library and did most valuable service for the City, in helping to improve the usefulness of that institution.

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As a lawyer, Brother Cutter made a specialty of commercial business. He enjoyed thoroughly the detail connected with the handling of accounts. He was a man who enjoyed the technicality of the law, and nothing delighted him more than to get hold of some obscure and complicated legal question and arrive at a correct solution. Though a forcible and pleasing speaker, he engaged but seldom in the actual trial of jury causes, his business being principally an office practice.

As a man, Mr. Cutter was genial by nature and had a large circle of friends. The esteem in which he was held in the city in which he had made his home for almost half a century is best shown by the following editorial taken from the Nashua Telegraph, at the time of his death.

"The death of Henry A. Cutter takes from the activities of Nashua another resident, a greater part of whose life had been passed here and whose loyalty to the community and to his ideals was of the highest.

"Born in the neighboring town of Peterborough and the son of a practicing attorney, Mr. Cutter, following his school and college course, was attracted to and naturally entered that profession. His father at the time of his death was the Dean of the Hillsborough County Bar. In the course of the practice of his profession, Mr. Cutter had come into contact, in a very vital way, with the business, political and social movements of his city. He was a man of independent thought and action, an independence which prevented him from following the Bryan phantasy of '96 and which again aligned him with Roosevelt in 1912. Mr. Cutter was a man of unusual literary taste and judgment. He was the author of one of the chapters of the History of Nashua, a chapter recognized for careful and discerning selection of data. His more recent work prepared for publication was a compilation of the History of Rising Sun Lodge, in connection with the One Hundredth Anniversary of that body.

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"His public service, as trustee of the Public Library, was one in which he took unusual satisfaction. Nashua citizens who have felt warranted pride in the excellence of the Public Library, owe much to Mr. Cutter's self-sacrificing efforts to make this institution the best possible institution of the kind within the resources at hand.

"Mr. Cutter was a citizen who will be greatly missed in his profession by a wide circle of friends and acquaintances, in his church, in which he was a leading spirit, and by the public generally."

He was ill for over a year, and died September 27, 1924. He is survived by a widow, who was Katherine M. Greeley, of Nashua, a direct descendant of Matthew Thornton, one of the signers of the Declaration of Independence, and two daughters, Miss Janette, who resides at home, and Mrs. Madeline Wyman, wife of Franklin Wyman, of Fitchburg, Massachusetts; also a grandson, Franklin Wyman, Jr.

As I have read this brief outline of the life of Brother Cutter, it strikes me as inadequate and impossible in a statement of this kind to express the personality of a man.

During the last five years Brother Cutter had an office in the same building with myself and for the first time in my practice I came in close contact with him. I was struck with the beauty of the man's personality, as a friend and neighbor. Always genial, a man of ready wit and a man of strong likes and dislikes, opinionated on some subjects, but a man who was conscientious and most loyal to his friends. Brother Cutter enjoyed the companionship of those he liked, but he wasn't, as Judge Hoitt, a born mixer. He was more of the scholar and the research student and nothing delighted him more than to get hold of some intricate problem of pleading or practice and delve into the technicalities, which to the ordinary lawyer do not offer much pleasure.

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As a man, Brother Cutter was of the highest character. He was a fine husband and a fine father. He had a beautiful home life.

During the last year or two of his life, he was threatened with an incurable disease. I saw him occasionally and it was wonderful to watch his face as he would describe his condition and his hopes for recovery, which he knew was probably impossible. To the very end he kept up this same hope, this feeling of cheerfulness, this genial characteristic.

I feel that Nashua and the Hillsborough County Bar has lost in Brother Cutter a splendid type of a man and citizen and lawyer and those who knew him in the recent years of his life will bear me out when I say that he was a genial friend and gentleman.

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EDWARD A. LANE

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EDWARD AUSTIN LANE.

By William H. Sawyer of Concord.

Edward Austin Lane, a member of the Bar of New Hampshire, residing and practicing in Pittsfield, and a member of this Association, died at the Elliott Hospital in Manchester on August 14, 1923, after an illness of several weeks.

Brother Lane was born in Carroll, in our County of Coos, November 27, 1854, being one of twin boys born to Richard and Hannah (King) Lane. The house in which he was born is still standing, facing the Daniel Webster highway, about half way between the Twin Mountain House and Whitefield.

His earliest American ancestor was James Lane, who located at Casco Bay, Maine, where Lane's Point and Lane's Island were respectively given his name. This island had been a favorite place for council meetings of the Indians, and was a burying ground for their dead. James Lane became a sergeant of the Westcustigo military organization, formed on the plan of the London train-bands, to which the immortal John Gilpin belonged.

James Lane married Sarah White, a half-sister of Sir William Phips, the royal governor of Massachusetts. Her mother, who was twice married, had twenty-six children. Sargeant Lane was killed in a battle with the Indians. His descendants lived largely in seaport towns of Maine and Massachusetts; and were generally blessed with large families of children.

Richard Lane, the father of the subject of this sketch, was born in Minot, now a part of Auburn, Maine, May 4, 1806. In 1832 he moved to Whitefield, New Hampshire, from thence to the adjoining town of Carroll, later returning to Whitefield. In the fall of 1851, he went to California, leav-

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ing his family in New Hampshire. He returned in the spring of 1853.

In 1833 he married Hannah King, a daughter of Asa and Sarah (Burns) King of Whitefield, and granddaughter of Major John Burns, the first settler of Whitefield and who fought at the Battle of Bunker Hill. The little park in the center of the village of Whitefield, known as King's Square, was donated to the town by Asa King, as was the lot on which the Town Hall now stands.

Richard and Hannah Lane had eleven children, of whom the youngest, Effie Jean Noyes, of Redlands, California, is now living. Two of the number, Charles Irwin, a twin brother of the subject of this sketch, and Hannah Luella became physicians, the latter a graduate of the Medical College of Boston University and practiced in California, and the former, a graduate of Hahnemann Medical College of Philadelphia, practiced in Concord, where he died April 13, 1883, leaving a widow, who later married Rev. Daniel C. Roberts, vicar of St. Paul's Church, of Concord. Three of Richard Lane's sons served in the civil war, one dying from wounds. Richard died at Whitefield, October 12, 1884, aged seventy-eight, and his widow died at Whitefield in 1896, aged eighty-one.

The subject of this sketch was educated in the schools of Whitefield and Littleton. He studied for a portion of the required period at Lancaster, with the Heywoods, supporting himself in the meantime by living in the family of the late Dr. Ezra Mitchell, where he looked after the doctor's horses and did the ordinary chores for his board and room. The final period of his term of studies in law was spent in the office of the late Henry P. Rolfe, of Concord. He was admitted to the New Hampshire Bar in 1879, at the age of twenty-five; and was admitted to practice before the Supreme Court of the United States in 1905. He settled first in Epping, where he practiced for a brief period, thence removing to

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Pittsfield in 1881, where he practiced until stricken by the illness, which terminated in his death.

On May 24, 1882, he was united in marriage to Annie A. Barter, of Concord, a daughter of Lewis Barter, the plaintiff in the celebrated case of Barter vs. Wheeler &a, Trustees for the second mortgage bonds of the Northern (N.Y.) Railroad, reported in the forty-ninth New Hampshire report. No children were born to this union.

In politics Brother Lane was a republican and represented his town in the House in the session of 1909. While rarely seeking office, he was, at various times, Trustee and President of the Farmers' Savings Bank; a Trustee of the Town Library; Chairman of the Board of Education, and President of the Board of Trade. He was a member of Corinthian Lodge, A. F. & A. M., No. 82, and of Pleiades Chapter, Order of the Eastern Star, and of Norris Lodge, Knights of Pythias.

During the period of the draft in the Great War he was an untiring worker, almost entirely abandoning his practice for that work. He was recognized by his fellow townsmen as one of the most public spirited men of the town. The feeling of respect, with which they regarded him, was shown on the occasion of his funeral by the closing of all places of business during the hour of the services and interment.

In the practice of his chosen profession, he was one of the most industrious members of the bar. No point was too small to escape his observation and consideration; none too large for him to grasp and appreciate. It was rare indeed that opposing counsel presented any issue, upon which he was not prepared.

In the earlier days of his practice, it was his custom to retain the services of some able jurist, for a full day's conference, and bringing all his cases, he would put his points one by one to his counsellor, for the benefit of the latter's views, not only on their probative force, on the disputed issues of

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facts, but as well for the benefit of the latter's views as to the bearing of the law on his whole case. The present Chief Justice of our Supreme Court, when in practice, was thus retained many times by Brother Lane, and in speaking of it to the writer, many years since, said that he observed that Brother Lane always presented the weakest points of his cases first, and closed with the more vital matters. This custom shows not only appreciation upon his own part, of the value of the probative force of facts, but also discloses the care with which his cases were prepared. So thorough was his preparation for trials, that he was a most skillful advocate.

While never given to flights of oratory, before the Court or jury, his arguments were filled with food for reflection, and were presented with force and convincing power. He was immaculate in his personal appearance before a jury, and frequently, when he arrived at the session which was to conclude with his argument, he wore a pink carnation, as a boutonniere. In the practice of his profession, his integrity was recognized by friend and opponent as of the highest. Probably no member of the bar kept a closer or more accurate personal cash account than Brother Lane. Items as minute as the expense of a postage stamp were recorded therein. In the preparation of his pleadings or legal documents he was both painstaking and skillful. In the examination of witnesses he was adept and adroit. Probably his most celebrated case was that of the extradition of Mrs. Munsey, which he argued with great ability before the Supreme Court of the United States, and which has become a landmark in the law of extradition.

By his demise, the community lost a valuable and public spirited citizen, and the bar a careful, honest and most thorough lawyer. He will be missed from our ranks.

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HARRY T. LORD

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HARRY TRUE LORD.

By James P. Tuttle of Manchester.

Harry True Lord was the son of Harrison Dearborn and Juliet True Lord and was born at Manchester, New Hampshire, May 7, 1863. He received his early education in the public schools of the city and entered Dartmouth College in the fall of 1883 and graduated from that institution in the class of 1887. For the next three or four years he was engaged in teaching and was very successful in this profession. His father, however, had been a deputy sheriff and coroner of Hillsborough County for many years and it was the father's wish and ambition that the son should study law. He registered as a law student in the office of the late Hon. David A. Taggart and three years later was admitted to the Bar. Mr. Taggart was painstaking as a preceptor; Mr. Lord was apt as a pupil and he came to the Bar well equipped in all the fundamentals of the law. It was at just this time that Mr. Taggart was appointed receiver of the Granite State Provident Association, a financial institution that had been doing a widespread business for several years, with principal offices in Manchester. Mr. Lord was chosen as secretary and financial manager by the receiver. In this work, which continued for several years, Mr. Lord became a master of system and accumulated a fund of financial knowledge that made him an authority upon financial subjects and later led him to incline to that line of work and to probate practice, rather than to the trial of causes. He was well read, however, and his judgment was sound in all branches of the law and he was a safe adviser in all matters.

In 1899 he was elected a member of the Common Council from Ward 4, Manchester, and was re-elected in 1901. In each term he was chosen President of that body. In 1902

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he was elected from the same ward a member of the Constitutional Convention. In 1904 he was elected a member of the Legislature and was re-elected in 1906, taking an important part in the sessions of 1905 and 1907. In 1908 he was elected to the New Hampshire Senate from the seventeenth district and was chosen president of the Senate at the session of 1909. In 1910 he was chosen a member of the Governor's Council for the second district and was one of its most active and influential members in the years 1911 and 1912. These public positions naturally interfered materially with his work as a lawyer but he held many positions of trust and from them received a substantial income.

In the World War work he took a very active part and was a member of the Draft Board and the record of his office was a model for others to follow.

When the veteran legislator, the late Hon. James E. French, who had been Chairman of the Appropriations Committee of the New Hampshire Legislature for a long series of years, passed on to his reward the leaders of the State with unanimity turned to Mr. Lord to fill that position. He was elected to the Legislature from Ward 2, Manchester, in 1920, and re-elected in 1922. We have it on the best of authority that in the session of 1921 he fulfilled the expectations of his friends, and though not chairman in 1923 he was an active and influential member of that committee.

His faithfulness is well illustrated by the fact that for twenty-one years he was the secretary of the Calumet Club of his home city. He was always much interested in matters historical and was treasurer of the Manchester Historical Association for many years.

He held positions in our Manchester Society, Sons of the American Revolution, and at his decease was Director General of the National Society.

Mr. Lord was twice married,—first to Flora J. Cooper, and second to Florence M. Stanley, who survives him. By

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his first marriage he had one daughter, Elizabeth, who graduated from the Museum Art School of Boston in 1923 and is now a teacher in that institution.

In his sudden decease on September 1, 1923, the New Hampshire Bar lost from its ranks a devoted brother and a dependable friend, a citizen of high character, a wise legislator who stood as a faithful guardian of the State's finances, a trusted councilor who by his work exemplified all that is safest and best in statecraft,—one who was highly esteemed by all of us and who was worthy of the many high honors that came to him; and we recognize his merit and high standing attained in his unselfish service for the City of Manchester and the State of New Hampshire.

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ROBERT LIVERMORE MANNING.

By Patrick H. Sullivan of Manchester.

Robert Livermore Manning was born in Annapolis, Maryland, on January 20, 1872. He was the son of Capt. Charles Henry Manning, who came from old New England stock, being the descendant in the ninth generation of William Manning, who settled in Cambridge, Massachusetts, in 1634, and whose land there remained in the Manning family for more than two hundred and thirty years thereafter.

In 1871, Captain Manning married Miss Fannie Bartlett, of Boston, the sister of Major-General William F. Bartlett, one of Massachusetts' finest soldiers in the Civil War, a statue of whom has been placed in the State House.

To Captain and Mrs. Manning were born four sons: Robert, Charles, a mechanical engineer, Harold, who died some years ago, and Francis, an instructor in biology at Harvard College.

The family came to Manchester in 1882 and Robert was educated in the public schools there. After two years in the high school he entered Riverview Military Academy at Poughkeepsie. He matriculated at Harvard College in 1891 and graduated with the class of 1895. That fall he entered the Harvard Law School, completing his course in 1898 and in the same year was admitted to the bar in New Hampshire and began practice in Manchester.

He married on October 23, 1900, Frances Fay Sawyer, of Manchester, who survives him together with a daughter, Margaret Hoyt Manning.

On February 11, 1924, he started with his brothers, Charles and Francis and Ralph D. Reed for an outing at Lake Tarleton and while walking upon the railroad north of Glencliff station a special train, of which they had no warn-

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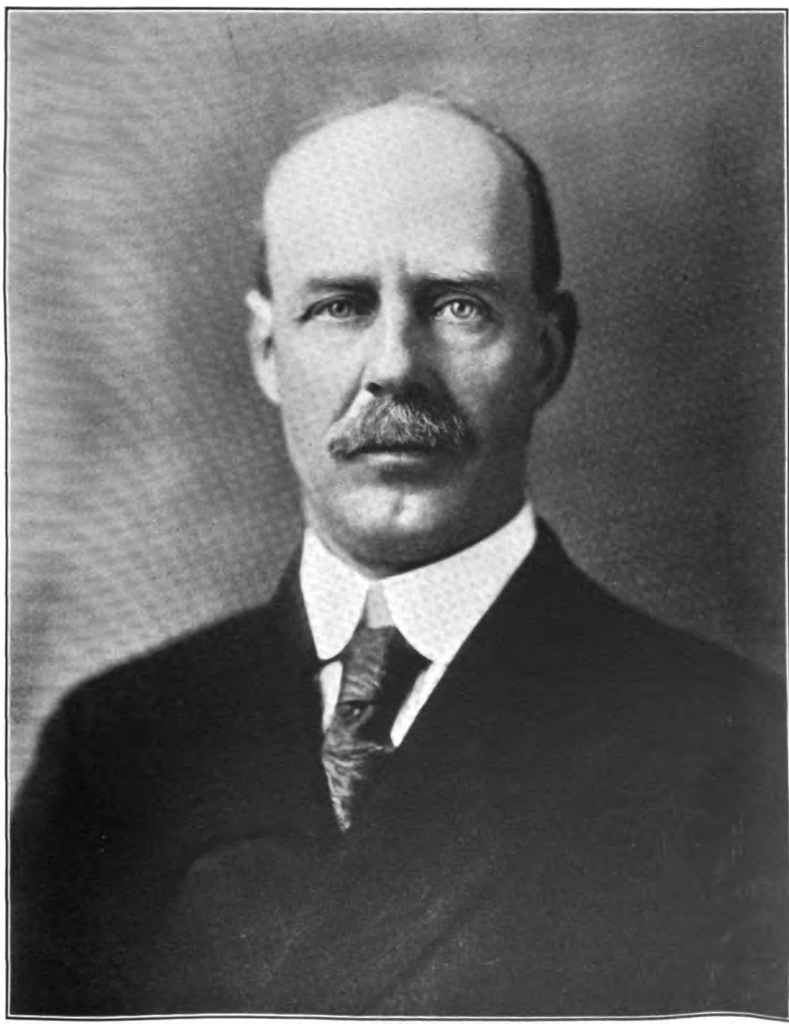

ROBERT L. MANNING

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ing, overtook the party and the three Mannings were instantly killed.

But we do not think of Brother Manning in terms of biography. Rather would we speak of him as his fellow-lawyers knew him in the years he walked and worked among us.

It is not easy to begin a task of this sort—in fact it is most difficult to couch in seemly and reserved terms an affection which went far beyond the bounds of mere liking. We use phrases thoughtlessly and we say we like this one or that one. But for Bob Manning there was a warmer and much deeper feeling not lightly to be put into words.

Although not born in Manchester he came here at an early age and grew up with it. His father, one of the foremost maritime engineers of his day, was identified in a most honorable and useful capacity with one of its great industries. Here it may be said that there can be no proper appreciation of Robert Manning unless we advert to the filial devotion manifested by him and his brothers. They needed the compulsion of no commandment to honor their parents, and especially did they take pride in the patriotic service rendered by Captain Manning. It was an inspiration to them always.

While a pupil he was active in school sports and early evinced that love of outdoors which lasted all his life. So it was natural that at college he should take part in football and rowing, those strenuous competitions which make robust the fibre of American youth. Shortly before his death he reviewed with another Manchester boy the history of his grammar school days and the baseball of that period. Not a diamond was omitted nor a player forgotten.

Upon his admission to the bar, he became associated with that firm in Hillsborough County which furnished a senator to the nation and a governor to our state. They were happy years for him who loved books and the lore of the law. Care-

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ful, painstaking and thorough, he was not given to that side of our profession which attracts most the public eye. But in the fundamentals he was adept, and a perusal of our reports during that time will disclose frequent mention of Robert L. Manning, by brief and orally. He felt the very essence of the sentiment, "Of law no less can be said than that her seat is the bosom of God, her voice the harmony of the spheres; all things in heaven and earth do her reverence, the greatest as needing her protection, the meanest as not afraid of her powers."

He was a representative in the Legislature of 1907, serving upon the Judiciary Committee, and helped to frame and enact much forward and progressive legislation. With many it was not a popular course in those days but he followed his convictions, serene and unruffled. Though considerate always and often deferring to others in non-essentials, in matters of principle he was adamant.

Consistent with his sense of duty, he served a military apprenticeship at Plattsburg but circumstances prevented his participation in the World War. Perhaps no disappointment could be keener, but he promptly made the best of it and assumed the humbler post of state guard, determined to do his bit.

In his later years he took up with zest that work for the young and under-privileged which gives promise of such fine returns in sturdy manhood. Because his own active boyhood was vivid to him in mid-life he could enter upon this with a genuine enthusiasm. In naturalness, simplicity and sense of humor he was particularly fitted for it. He took boys to his heart by an instinct of brotherhood quickly understood by the young. They responded in turn to his kindly impulses and with them he repeated his youth. As in former days his delightful waggery had dubbed the old swimming group the "Sapolio Club" and the mountain-climbers the "Skyliners," so did his fancy play for these later companions

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and invest every scene of wood and field and mountain with the fine impressions of a wholesome nature.

Like the outdoors that he loved, Robert Manning was an open and honest soul, disdaining deceit and sham, and incapable of guile. It is good to picture him at the head of his boy scouts clearing a trail on Piermont Mountain or discovering for his young friends the delights of Tarleton; to imagine him again at the swimming, the skating, the snowshoeing and the skiing that made him once more a lad, a boy among boys; and it is fine to recall his companionship on the mountain trails of our state which he knew so well and tramped so often. Harmoniously and naturally he fitted with the environment of Chocorua and Carrigain, of Lafayette and Washington, of the Carter and Franconia Ranges and all the other rugged outlines of our northern landscape.

Robert Manning is gone but the world is richer for his stay here. His family will cherish the memory of a loving husband and an affectionate father. His brother lawyers will recall with pride his industry in the profession, his ever-present sense of fair play and the good sportsmanship that marked all his dealings. His boys will remember a comrade, counsellor and guide most worthy of emulation. His friends can never forget the kindliness and gentleness and unselfishness that thought always for others and never for self.

And because he was honest and straightforward in every aspect of his life, above envy and beyond pettiness of any sort, and because he lived the Golden Rule, we feel assured that when the call came, in the open where he loved to be,

"He scarce had need to doff his pride or slough the dross of Earth—
E'en as he trod that day to God so walked he from his birth,
In simpleness and gentleness and honor and clean mirth."

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HARRY MOSES MORSE.

By Harry Bingham of Littleton.

Harry Moses Morse died at Littleton, June 3, 1924. He was a descendant of the ninth generation of the family founded in New England by Anthony Morse who came from Wiltshire, England, and settled in Newbury, Massachusetts, in 1635. He was born on a farm in Haverhill, Grafton County, New Hampshire, March 22, 1857. He obtained his education in the Haverhill and Lisbon Public Schools and then taught school several years until he entered the office of John L. Foster, of Lisbon, for the study of law where he remained one year. The next two years he studied law with Judge Edward D. Rand and on August 31, 1880, he was admitted to the New Hampshire Bar at Concord.

He at once formed a partnership with Judge Rand under the firm name of Rand & Morse which continued until the death of the senior partner in 1885. Later he became associated with Judge George F. Morris, now of the United States District Court of New Hampshire, practicing as Morse & Morris until 1892. From 1895 to 1899 Mr. Morse was in California and returning he located in Littleton where he practiced until the time of his death.

Mr. Morse was married on December 31, 1889, to Miss Helen Oakes of Franconia. There were no children born to this union. Mr. Morse was a Republican in politics and represented his town in the State Legislature, being chairman of the important judiciary committee in 1921. Twice he was a member of the Constitutional Convention. He served a number of years as Trustee of the Littleton Public Library and was for a short time a Justice of the Municipal Court.

It is doubtful if there was ever a better story teller in the State than Harry M. Morse. His supply of witty anecdotes

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was inexhaustable. He had pronounced literary tastes and his knowledge of general literature was extensive. He was especially versed in history and the biography of prominent Americans. Mr. Morse counted among his friends many of the leading statesmen of his State and it was his delight to be able to have a quiet chat with his fellow citizens in his office. In one corner of his office he had the wall covered with photographs of prominent men whom he greatly admired. Among them were those of General Marston, Honorable Harry Bingham, Honorable Irving W. Drew, Judge Edgar Aldrich and Judge Edward D. Rand.

The chief hobby of Mr. Morse was farming and for years he lived in a delightful spot on Mount Eustis, driving back and forth to his office daily. He liked horses and was always the owner of a very fine one.

He was in failing health for the last year of his life and spent several months at the Littleton Hospital prior to his death.

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EDWARD E. PARKER.

By George A. Wagner of Manchester.

Edward E. Parker, for fifty years an honored member of the Hillsborough Bar, was born in Brookline, New Hampshire. He began practice at Nashua in 1873 as partner with General Aaron F. Stevens and for seven years was associated with him in law business of importance.

On June 3, 1879, he was appointed Judge of Probate for Hillsborough County and continued in office until January 7, 1912, when having reached the age of seventy years his term ended by constitutional limitation.

This period of thirty-two and a half years as Probate Judge exceeds the length of service of any preceding Judge of Probate in this state.

In connection with his office, in 1911, he was appointed by the Governor, one of three judges in co-operation with two registers, to prepare rules of practice and procedure, and blanks for use in such courts, completing the work within a year.

Thus by this exceedingly long experience in a county having the largest amount of probate business of any county in the state, he became so familiar with probate law that he became the dean of all our Probate Judges in New Hampshire.

His distinguishing qualities as judge were courtesy, patience, conscientious fairness and freedom from prejudice and a constant desire to aid parties in court to reach an adjustment of their affairs with the least trouble to themselves. He was ready at all times to give freely of his advice and to take upon himself labor which was not a part of his duties in his evident desire to be of all possible assistance.

Out of court, "as a man among men" he was sociable and genial, keenly alive to the humorous side of every day life.

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EDWARD E. PARKER

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one whose fellowship was enjoyable, a man whose companionship as a follower of Sir Isaac Walton was worth having, for he loved out door life and the sports of the home waters and those far away.

He had a special bent for local history and in his later years devoted much time as Editor-in-Chief, with able assistants, in writing a History of Nashua. Also a history of his native town, Brookline, New Hampshire, to which he was ever loyally attached, both of which productions evidenced much literary ability and industry.

He was endowed by Nature with a poetic sense and imagination and while a senior in Dartmouth College was selected as the poet for the celebration of the Centennial of the College and acquitted himself with great honor.

His retirement at the age limit was followed with keen regret by the bar and by those who had business with his court, for of him it can be said that he rendered faithful and loyal service.

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GEORGE FRANK RICH.

By Edmund Sullivan of Berlin.

There are experiences in life which are darker than others —this is especially true when one seems to lose a greater number of personal friends in quick succession during brief periods. This is true of the writer.

The members of the Coos County Bar Association, resident in this City, have been taking their exit so fast that it seems the shots are striking closer than within any other like period in this generation.

Within a short time Judge Robert N. Chamberlin, William H. Paine, J. Howard Wight, Herbert I. Goss and last, the subject of this sketch, the Honorable George Frank Rich, have gone to their final reward. All these men were possessed of superior qualities and rose steadily to prominence from the very beginning of their advent into the practice of law. The taking away so rapidly of men of such capacities. such fine qualities, leaves a void in this Association that it will not be easy to fill.

George Frank Rich was born in East Bethel, Maine, December 1, 1869, where he attended public schools and Gould's Academy, from which institution he was graduated in the spring of 1888. In the fall of that year he entered the University of Maine at Orono, where he remained for a period of three years, leaving there to enter the law department of the University of Michigan at Ann Arbor, from which he graduated with the degree of Bachelor of Laws in June, 1893. After graduation he was admitted to practice in the Supreme Court of the State of Michigan, and immediately came to Berlin, where he entered the office of Robert N. Chamberlin, at that time a practicing lawyer in that city.

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GEORGE F. RICH

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In June, 1894, he was admitted to the Bar of New Hampshire, and at once formed a partnership with Robert N. Chamberlin, which continued until January 1, 1904, when Judge Chamberlin was appointed to the Bench of our Superior Court.

On June 10, 1895, he was appointed Judge of the Municipal Court of Berlin, which position, with the exception of a few years on account of political changes, he held until his death.

On January 1, 1905, he entered into partnership with Thomas L. Marble, of Gorham, under the firm name of Rich & Marble, which continued until 1917, when Judge Marble was appointed to the Superior Court to fill the vacancy made by the death of Judge Chamberlin.

After that he continued to practice alone until September 5, 1922, when he formed a partnership with his son, Robert, under the firm name of Rich & Rich.

By his long service on the Municipal Court, he was known as and familiarly called Judge Rich. He was a member of the State Bar Association and the Coos and Grafton Bar Association until it went out of existence, having been merged in the State Bar Association, and also of the Coos County Bar Association, at the time of his death. He was also a Director of the Berlin Savings Bank & Trust Company, and President of the Androscoggin Valley Country Club, recently organized by the citizens of Berlin and Gorham.

Judge Rich was a thirty-second degree Mason, a Knight Templar, member of the North Star Commandery and Kora Temple, Lewiston, Maine. He was a member of the Knights of Pythias and of Psi Chapter of the Kappa Sigma Fraternity.

On June 10, 1896, Judge Rich was married to Persis M. Mason, of Berlin. This union was blessed with three children, Robert, Gilbert and Barbara, two of whom survive: Robert, who was associated with him and who succeeded to

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and is carrying on the large practice which he had established, and his daughter, Barbara, who is now completing her collegiate course. He is also survived by his widow, his mother, Mrs. Sarah E. Rich, all of Berlin, and by his sister, Miss Jennie M. Rich, of Burlington, New Jersey.

Judge Rich was a lawyer and as such he did not depend on any one quality. He was not deficient in any. He had no other profession and made no pretentions to any other business. Law was his profession and his large, comprehensive mind, with little effort, sounded its depths and mastered its principles.

As a trial lawyer he was a worthy opponent. He saw the strong points of his case and stuck to them with a tenacity unexcelled. He was never captious or bothered with trifles. To his associates he was always kind, courteous and considerate, especially to the younger members of the profession, whom he seemed to take delight in aiding.

He was not a "closet thinker" nor a case lawyer, in the sense that this term is commonly understood. His ideas of law were included in no small compass. He mastered fundamentals and applied strong common sense and a judgment that was formed out of the associations with which he was surrounded and with which he daily came in contact. His rise in the profession was rapid; representing the Grand Trunk Railroad as its only counsel in New Hampshire, and other large corporations, also several towns, he was counsel in many important and various kinds of litigation—in fact, in the past twenty-five years, there has been very little litigation of consequence in this County that he was not interested in as counsel.

Large in size and strong in stature, with a distinguished personality and magnificent presence—all contributed to the remarkable faculty which he possessed as a trial lawyer. By a brief but incisive as well as forceful cross-examination, he brought to the attention of the Court and jury the strong

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points upon which he relied, as well as the weak points of his adversary. In doing this he showed rare skill as well as great legal acumen. However, this was not done unostentatiously—but intentionally prominent, so that the Court, jury and opposing counsel could see what he considered to be the strong points in the case; these positions he maintained with a strong, forceful argument which was always interspersed with a keen sense of humour, of which he always carried a large stock, backed by immense native qualities and was always effective and usually convincing. He never wrangled over technicalities either in arranging cases for trial or in actual trial; whether his opponents stated the issues in his pleading as concisely as they might be stated he never stopped to consider. He knew the points in controversy—that was enough. In other words, he tried the case—not a race of skill in the use of technical language. His methods of trial were indescribable—they were clearly his own—nobody else could have made such effective use of them. Perhaps the best definition of them is "a big man acting originally and naturally."

For more than twenty years Judge Rich was Judge of our local Police Court, before which came many important matters, and it was there that could be had a full view of the strong as well as fine characteristics of the judge and lawyer. With a quick, analytical glance, he saw the motives and designs of the parties and the circumstances which moved them. He would at once approve or disprove them by bringing out his results in a general finding. He dealt very little in details that might be construed either to excuse or vindicate his judgment.

As Mayor of the City, possessing very strong native characteristics, firmness of decision and executive ability, he grasped and managed all questions that came before him—and they were many—with a comprehension that was a marvel to his associates and his friends, and at the close of his

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administration was remembered by a beautiful silver service by his associates on the council, which he prized highly,—to which political friends and opponents took pleasure in contributing.

While Judge Rich was a Republican, serving his party as Councilman and four terms as Mayor, from 1915 to 1919 inclusive, at the same time he recognized that two great parties, each contesting for supremacy, were necessary for the preservation of our institutions. He was often dissatisfied—even disgusted—with the political activities of his own as well as the opposing party, but he always adhered to his party as the necessary means to obtain the best results.

In private life, Judge Rich was simple, plain and devoid of artifice or ostentation; unusually blessed in his domestic relations, he found the happiest hours around the family hearth and in the company of congenial friends.

Never in the city of Berlin, the city of his adoption which he served so long and faithfully, were so many people amazed at the suddenness of his death—so agreeable and kindly and so universal was the radiation of his jokes and his pleasing personality, and so much was he in touch with everybody that when it was realized he was gone, it spread a pall of grief over them. They realized for the first time that a life-long friend had passed away and their sorrow was universal.

His funeral was held in Berlin. The vast outpouring of people was impressive. Places of business were closed. The tolling of the bell in the City Building, where he had served so long, impressively admonished the people of their loss. The church was crowded. Old and young came to pay him their last tribute of respcet.

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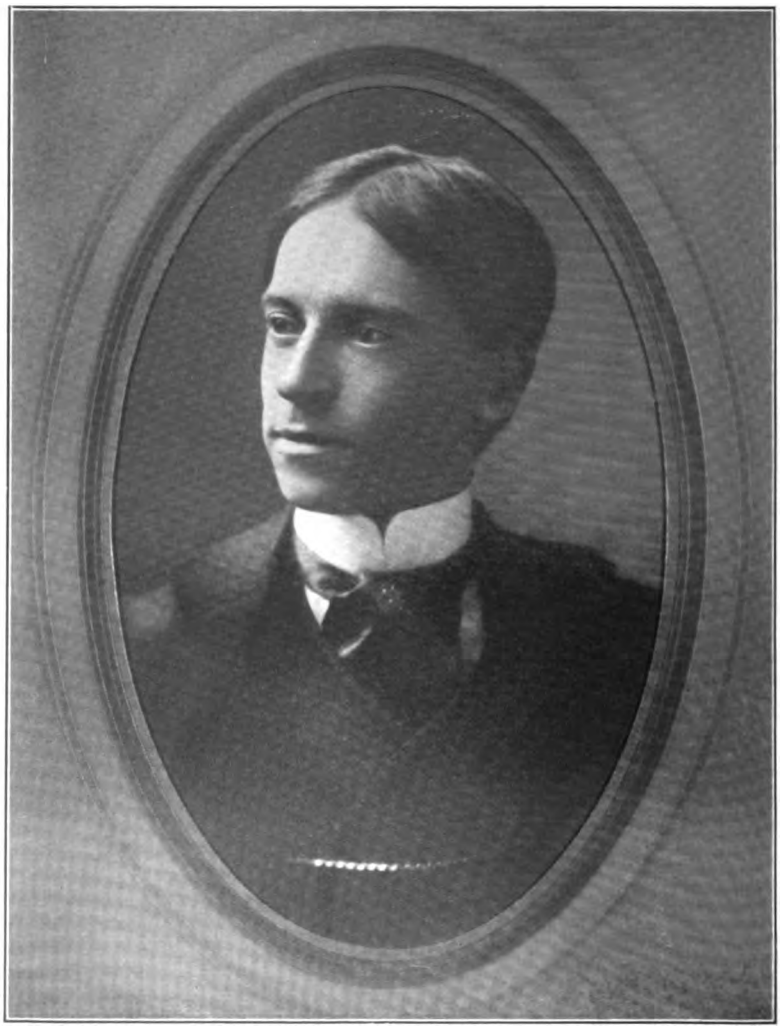

FREDERIC D. RUNNELLS

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FREDERIC DANIEL RUNNELLS.

By Marshall D. Cobleigh of Nashua.

Frederic Daniel Runnells, son of Daniel F. and Sarah E. (Farley) Runnells, was born in Nashua, December 21, 1870. His forbears were of the best known families in southern New Hampshire. His preparatory education was received in the Nashua public schools, graduating from High School in 1889, and from Dartmouth College with degree of A. B., in 1893, and A. M. in 1894. He studied law in Chicago and was admitted to the Illinois Bar in 1897. Coming home he took a course in the Boston University Law School, receiving his degree in 1898 and was admitted to the New Hampshire Bar, March 1899. For a short time he was associated with General C. J. Hamblett and later for himself in the practice of law in Nashua. He specialized in Probate and Bankruptcy practice, and was administrator or trustee for many estates. In both the practice of law and business he was methodical, punctual and accurate. For a short time he engaged in the lumber business and other mercantile ventures in the South.

He was married June 12, 1918, to Jennie E. Rogers, who survives him.

Judge Runnells, while not blest with a strong physique, was public spirited and industrious, taking a deep interest in public matters and was continually honored with numerous positions of trust, many of an important nature. He was a member of the Constitutional Conventions from Ward 7 of Nashua, in 1902 and 1912; Police Commissioner from 1904-1907; Associate Justice of the Nashua Police Court from 1907-1913 and Deputy Collector of the Internal Revenue from 1922 until his death.

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His patience and fortitude, through a long period of acute suffering, won the affectionate admiration of all those who knew of his condition.

The day after his decease, his old friend, George Parkhurst, gave the following estimate of him in part of an editorial in the Nashua Telegraph, which aptly expressed the judgment of all who knew our departed brother:

"'Fred' Runnells, as he was known and liked to be known by those with whom he had grown to manhood in this community, and in which he had done his full share in things making for community good during years of development and changes, will ever be remembered as one of the sweetest, kindliest, lovable personalities, we have ever known. Fred Runnells never did a mean or unbecoming deed. He never missed a chance to help another. He never imposed upon another's rights. He was ever ready to speak the word or do the thing needed in behalf of those to whom misfortune had come. He loved his home and his books. He loved old-time Nashua, and the newer Nashua."

Mr. Runnells died January 31, 1924, and his remains rest in Woodlawn Cemetery, Nashua.

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HON. REUBEN E. WALKER

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REUBEN E. WALKER.

By Amos Blandin, Jr., of Concord.

Over seventy years is a long stretch and when, as with Reuben E. Walker, it is devoted to an honorable and able service of mankind, well may the fortunate mortal at the end "soothed and sustained by an unfaltering trust.....lie down to pleasant dreams." So it was that on New Year's Day, 1922, Reuben E. Walker died in the same calm spirit in which he lived and worked.

From the beginning, his career was distinguished in the true sense by modesty, unselfishness and ability in a life's work in which the opportunities and temptations to aid oneself at another's expense as well as the demands for intensive and discerning labor are most marked.

He was born in Lowell, Mass., February 15, 1851, son of Abial and Mary Walker. From there he moved to Warner, New Hampshire, where his boyhood was spent. He graduated from Colby Academy in 1871, from Brown University in 1875, and the same summer married Mary E. Browne by whom he had one child, Bertha W. Walker, who has kept house for him since his wife's death in 1907.

He studied law in the office of Sargent and Chase and was admitted to the Bar in 1878. It is a noteworthy fact that both masters and their pupil later became judges of the Supreme Court of New Hampshire. On leaving their office, he practised in partnership with Robert Ray for five years, the two collaborating in the composition of "Ray and Walker's Citations"; from the end of this period, he practised alone, holding the position of Solicitor of Merrimack County from 1889 to 1891, when he entered the firm of Streeter, Walker

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and Hollis. In 1901, he went on the Bench of the Supreme Court of New Hampshire where the soundness and clearness of his opinions were marked by court and lawyers alike.

Although devoting most of his time to his work, he yet found an opportunity to be representative to the Legislature in 1895, a member of the Constitutional Convention in 1902 and a trustee of the Concord Library from 1901 until his death, together with other similar positions of dignity and trust.

Modest and retiring throughout, the honors which he received were thrust upon him and yet his achievements never failed to warrant them. He did not go unnoticed. In 1916, Dartmouth College gave him his L. L. D., and in 1921 his own College conferred on him a like honor. In religion, he was a Unitarian, and in politics, a Republican, but in these as in all things, he was broad without shallowness, catholic yet discriminating, tolerant without being loose.

We have lost a friend and a brother but if there be anything of worth in the example of a kindly and upright nature, Judge Walker has served us well.

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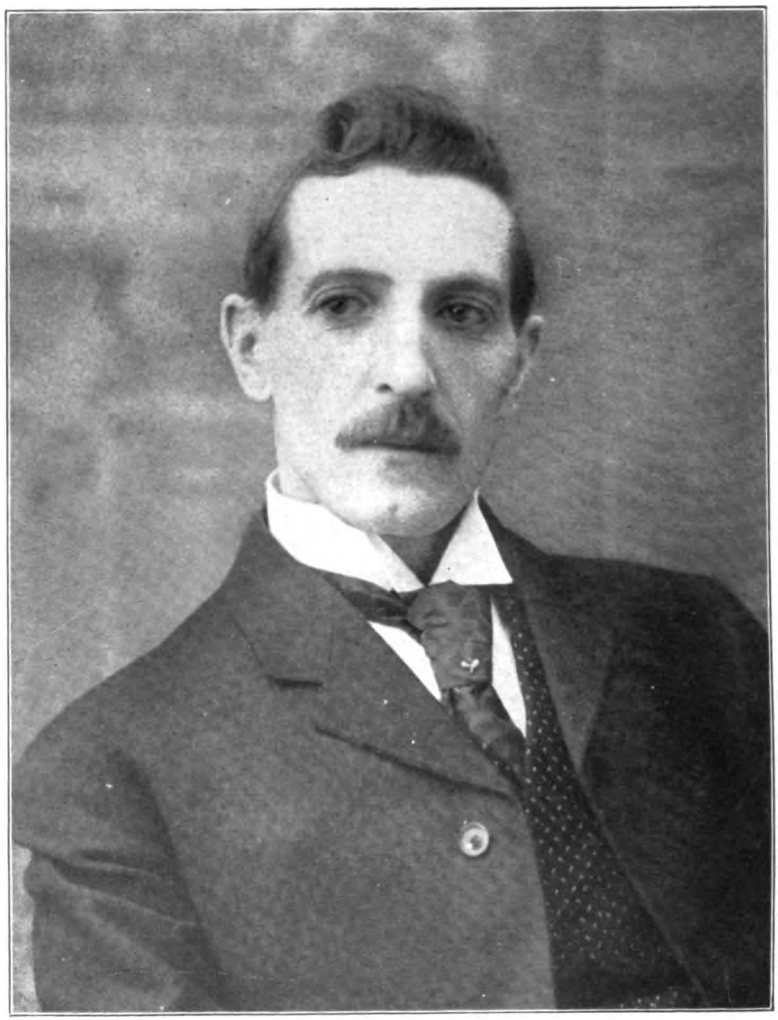

RICHARD J. WOLFE

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RICHARD J. WOLFE.

By Charles A. Madden of Keene.

Richard J. Wolfe, son of Richard and Mary Wolfe, of Walpole, New Hampshire, was born at Bartonsville, Vermont, September 20, 1866, and died in Keene, New Hampshire, on February 1, 1921, after a long illness.

Brother Wolfe's early education was obtained in the public schools of New Hampshire and Vermont. After graduating from the Bellows Falls High School he attended college at Sherbrooke and at Montreal, Canada. Like many who later took up law as a profession, he, when leaving college, turned to teaching and for several years taught languages and mathematics in schools in Walpole, New Hampshire, Burlington, Vermont, and Philadelphia, Pennsylvania.

After several years of this work he took up the study of law at Valparaisó (Indiana) Law School and graduated from that institution on June 22, 1910, with the degree of B. L. A year later he came to Keene and further prepared for the New Hampshire Bar in the office of Hiram Blake. In 1913 he was admitted to the New Hampshire Bar and on January 23, 1914, was appointed Justice of the District Court of Keene, which office he held until 1915 when the Court was abolished by legislative enactment.

Judge Wolfe was a man of great reserve and dignity. He was respectful to all persons, and in return demanded respect from those who came in contact or sought to do business with him. That reserve made him appear cold and unsympathetic, but it was even stronger than himself and he could not break it down. Although he loved friends he made but few intimate friendships, but to those who knew him well, they found beneath that reserve a clean heart and charitable man, one who would step far out of his way rather than in-

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jure another's feelings. He was a firm man but lacked something in modern aggressiveness; that characteristic necessary to build up a law practice quickly. His method was that of the old school, that of his preceptor the late Hiram Blake, where the clients sought the lawyer instead of the lawyer seeking the clients.

Before he could build a large and lucrative practice by this method, fate turned against him and took away his health. During the last three months of his life he seldom was able to go to his office, but he never gave up hope. He was persistent to the end that he would regain his health, and his fortitude, even to the very last, was remarkable.

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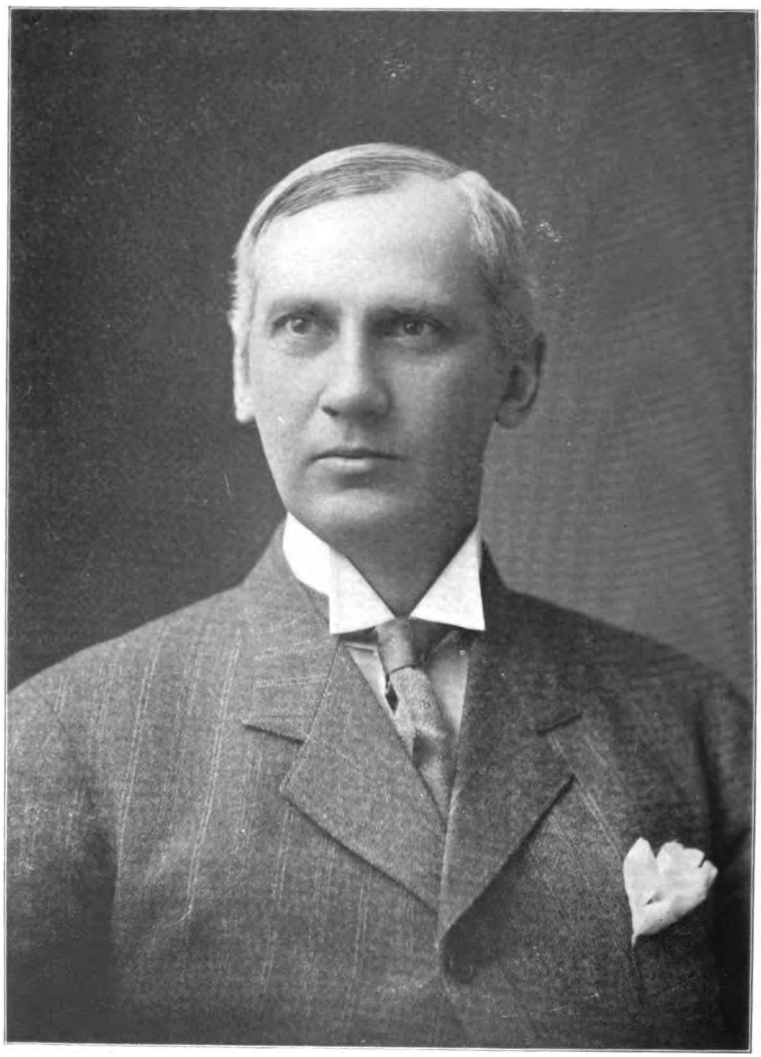

GORDON WOODBURY

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GORDON WOODBURY.

By Chief Justice Oliver Winslow Branch of Manchester.

To know Gordon Woodbury even slightly was to fall under the spell of his charming personality. His unfailing courtesy and polish of manner, his poise and distinguished personal appearance, all contributed to a favorable first impression which subsequent acquaintance only served to confirm.

A visit to his house disclosed him as the perfect host. A journey with him revealed him as a most agreeable traveling companion. A request for help to any worthy enterprise demonstrated his generosity.

His eagerness to serve during the war in any capacity which his physical condition permitted, and the satisfaction which he expressed in having a son at the front, exemplified his love of country. His tender care of that same son when he found him desperately wounded in a French hospital showed him as a wise and loving parent.

His interests covered a wide range of subjects. His good taste was instinctive and unfailing. Conversation with him was a mental stimulant. Upon matters of current interest his ideas were always definite; they showed the result of clear thinking, and were vigorously expressed in English which it was a delight to hear. He once remarked that "The ordinary political speech is very reducing." This aphorism illustrates his capacity for compact and picturesque expression coupled with an unerring choice of the words which precisely conveyed his thought.

He said that it was a tradition in his family that the Garden of Eden was located just over the Manchester line in the town of Bedford, and love for his ancestral home was one of the ruling passions of his life. He took great satisfaction in

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voting at the Bedford town meeting and interested himself deeply in the affairs of the town, with the result that he was actually regarded by his neighbors as a fellow-townsman despite his extended absences and large interests elsewhere.

Brother Madigan has dealt with his public services. Adequately to delineate his character is beyond my power, but all his friends know that one who was a very fine type of New England gentleman has left us.

By Thomas H. Madigan, Jr., of Manchester.

On the twentieth of June, 1924, in Bedford, New Hampshire, all that was mortal of the subject of this sketch was laid to rest in the family lot, there to remain with his forbears until the final call. From the slight eminence the wraiths of the departed over-look the ancestral acres that have been continuously in the family since the Crown Grant in 1723.

From stock intimately identified with the moral, material, and political growth of America from the advent of his paternal ancestor in Massachusetts in 1624; from stock that fought on the Plains of Abraham and at Bunker Hill; a lineal descendant of Matthew Thornton who in behalf of New Hampshire signed the immortal Declaration of Independence; from stock that filled every office within the gift of the people of New Hampshire, from Town Clerk to Governor; from stock that honored the Supreme Court of the United States as a member; from stock that graced the cabinets of two presidents; from stock that adorned both Halls of Congress; from stock always regarded in the full New England acceptance of the terms as good men, good women, good citizens, good neighbors, came Gordon Woodbury.

By accident of birth he first saw the light of day in New York City on September 17, 1863. He died in Manchester, New Hampshire, on June 17, 1924. He was a scion of one

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of New Hampshire's noted families and in his day and generation carried on in full measure the traditions of his class. He graduated from Phillips Exeter Academy in 1882; A. B. Harvard, 1886; LL. B. Columbia Law School, 1888. Immediately on graduation from Columbia he commenced the practice of his profession in New York City but within the year was compelled to abandon his work on account of ill health. By advice of his physician he came to Bedford, armed with the cheerful prognosis of his doctor "that he had one year to live". On his arrival in Bedford, as he more than once told the writer, he devoted himself honestly and conscientiously to the task of proving that that doctor had made a grave and serious error. By the early part of 1890 he had quite recovered his health and his thoughts then again turned to the law. He thereupon sought admission to the New Hampshire Bar, which was granted, and he immediately formed a partnership with Judge Lucian B. Clough and they engaged in active practice in Manchester for about three years. During this period he represented Bedford in the New Hampshire House of Representatives, in the Session of 1891, serving on the Committee on Revision of Statutes.

The written word always had a great appeal to him which was probably the reason for his transferring his activities from the law to the "fourth estate", for in 1896 he became the owner and editor-in-chief of The Manchester Union and so continued for a period of ten years. In his newspaper work he had a notable staff and a corps of workmen that helped materially to promote the success of and lighten the burden of one of the most exacting of tasks—the publishing of a modern newspaper.

Greater honors came to him, perhaps, at least more agreeable recognition of his superior talents, but the love, loyalty, and fealty of the newspaper boys of the days when Gordon Woodbury was Chief on the Manchester Union is a testimon-

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ial and a heritage more honorable and more enduring than symbols in brass or monuments of stone.

By tradition and conviction he was a Democrat. As such he was sent to the New Hampshire Legislature in 1891, and to the Constitutional Convention in 1902. In both instances by the grace of his fellow townsmen in Bedford. By his fellow Democrats of New Hampshire, he was sent as Delegate to both of the National Democratic Conventions in 1896, and to the National Democratic Convention in 1920. By virtue of his membership in the minority party these were his only elective offices, although his own party often sought him as candidate for high place.

His greatest political honor was appointive and came to him on August 26, 1920, when President Wilson made him Assistant Secretary of the Navy, vice Franklin D. Roosevelt, resigned. The choice was a most happy one and unique in one particular. He was the only able-bodied seaman who ever held the office. His great-uncle, Levi Woodbury, was Secretary of the Navy in President Jackson's administration. His cousin, Gustavus Fox, was Assistant Secretary of the Navy in President Lincoln's administration. Another cousin, Captain Thornton, was Executive Officer of Admiral Farragut's flag-ship at New Orleans and Mobile. His uncle, Gordon Woodbury, for whom he was named, was an officer on the USS Catskill, giving his life in the attack on Fort Wagner, Charleston Harbor, in August, 1863. This heritage of naval ancestry deeply impressed him in his youth and prompted his absence from home for a period without parental consent. On his return his most valued possession was his A. B. certificate issued in the Port of Liverpool. In his mature years he gave particular study to the Navy and had a deep knowledge of its history, its achievements, and its traditions. This knowledge, coupled with the view-point of an

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able-bodied seaman, helped materially to contribute to the unquestioned success he had, and was, as Assistant Secretary of the Navy.

For the record be it said that the writer was associated with Gordon Woodbury during his entire term of service as Assistant Secretary of the Navy, charged with the responsibility of living up to, or living down, the ponderous title affixed to his job by Congressional enactment, "Secretary to the Assistant Secretary of the Navy". Our relations were of necessity close and confidential. In positions of power and responsibility, particularly under the stress of modern conditions, the occupant is forced to give his confidence and practically entrust his good name to some one for the hours and the days are not long enough for him to study the details of the many large and momentous questions that come to him for solution or approval.

Hardly a man in the Navy had any knowledge of the equipment and fitness of the new Assistant Secretary for the work in hand. It is a pleasure to record how soon that vast organization, from truck to keel, sensed the fact that a man of wisdom, knowledge, courage, industry, judgment, and the capacity to decide, was second in command. As he became known, the charm of his personality added its appeal to his solid attainments. When he left, his record was one of work well and faithfully done and fit to be writ in the annals of his tribe.

During the World War he served as an official in the American Red Cross and in August, 1918, conducted a party of sixty-five Red Cross workers to Paris. From Paris he went to Boulogne where he served as legal adviser to the American Red Cross. His duties carried him to all the active fronts except Verdun and Argonne. After the Armistice he was a Director of Red Cross Relief work in Belgium and Northern France. He returned to the United States in February, 1919.

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After he was appointed Assistant Secretary of the Navy, he received one of the customary questionnaires from the publishers of "Who's Who in America," which contained the following: "What have you done worthy of special mention?" The answer written in his own hand "Nothing" was characteristic. Complimentary to his modesty perhaps but, I submit, inaccurate.

He was married April 18, 1894, to Charlotte Eliza Woodbury of Methuen, Massachusetts, who survives him. They had three children: Eliza Gordon who resides in Washington and is the wife of Frederick Sherwood Dunn; Peter now a student at Harvard; and George now a student at Princeton.

Gordon Woodbury was a personable man with a captivating manner that insured a welcome always. He was a selective, critical reader, particularly in matter of historical interest, with a type of mind that analyzed, tabulated, retained and always had at command the fruits of his study. Ample evidence of his grace of style in the spoken and written word is stored in the memory chests of his friends and the long list of written articles he left behind.

Emerson said: "He is a great man who inhabits a higher sphere of thought, into which other men rise with labor and difficulty; he has but to open his eyes to see things in a true light and in large relations, while they must make painful corrections, and keep a vigilant eye on many sources of error."

It is my judgment that our former member and friend met the test. May his soul rest in peace.

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APPENDIX.

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REPORT OF THE TREASURER, NEW HAMPSHIRE BAR ASSOCIATION. 1923-1924

Dr.

Balance on hand at date of last Annual Meeting:		
Liberty Bonds,	$1,000.00	
Savings Bank Deposit (Union Trust),	896.00	
Deposit, First National Bank	114.52	
		$2,010.52
Dues:		
1922-1923,	$ 18.00	
1923-1924,	792.00	
		810.00
Interest:		
Liberty Bonds,	$ 42.50	
Savings Bank,	34.09	
		76.59
Half-tone plates,		**12.00**
Bar Association Reports,		**67.25**
		$2,976.36

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Incidental expenses at Annual Meeting, 1922-1923,		$ 94.05
Current expenses:		
Envelopes, circulars, notices, postage, taxes, Americanization expense, deposit box at Bank,		68.03
Printing Proceedings,		499.84
Secretary and Treasurer,		300.00
On hand:		
Liberty Bonds,	$1,000.00	
Savings Bank (Union Trust),	930.09	
On deposit, First National Bank,	84.35	
		2,014.44
		$2,976.36

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OFFICERS OF THE BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE, 1924-1925.

President—THOMAS D. LUCE, Nashua.
Vice-President—STANTON OWEN, Laconia.
Secretary-Treasurer—AMOS BLANDIN, JR., Concord.
Executive Committee—
ARTHUR OLSON of Keene.
HAROLD K. DAVISON of Woodsville.
LEON D. RIPLEY of Colebrook.
HENRY S. RICHARDSON of Claremont.
WILLOUGHBY A. COLBY of Concord.
CHARLES M. DALE of Portsmouth.
ARTHUR E. KENISON of Ossipee.
F. CLYDE KEEFE of Dover.
PAUL DOYLE of Manchester.
THOMAS P. CHENEY of Laconia.

OFFICERS OF THE AMERICAN BAR ASSOCIATION, 1924-1925.

President—CHARLES E. HUGHES, 1529 18th St., N. W., Washington, D. C.
Treasurer—FREDERIC E. WADHAMS, 78 Chapel Street, Albany, N. Y.
Secretary—WILLIAM C. COLEMAN, 1405 Citizens National Bank Building, Baltimore, Md.
Vice-President for New Hampshire—ROBERT J. PEASLEE, Manchester, N. H.
Member of General Council—JAMES W. REMICK, Concord, N. H.
Local Council for New Hampshire—
LOUIS E. WYMAN of Manchester.
LESLIE P. SNOW of Rochester.
PHILIP H. FAULKNER of Keene.
HARRY BINGHAM of Littleton.

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PROCEEDINGS

OF THE

BAR ASSOCIATION

OF THE

STATE OF NEW HAMPSHIRE

N. S., Vol. 5, No. 3

1925

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PROCEEDINGS

OF THE

BAR ASSOCIATION

OF THE

STATE OF NEW HAMPSHIRE

1925

Concord, N. H.
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1927

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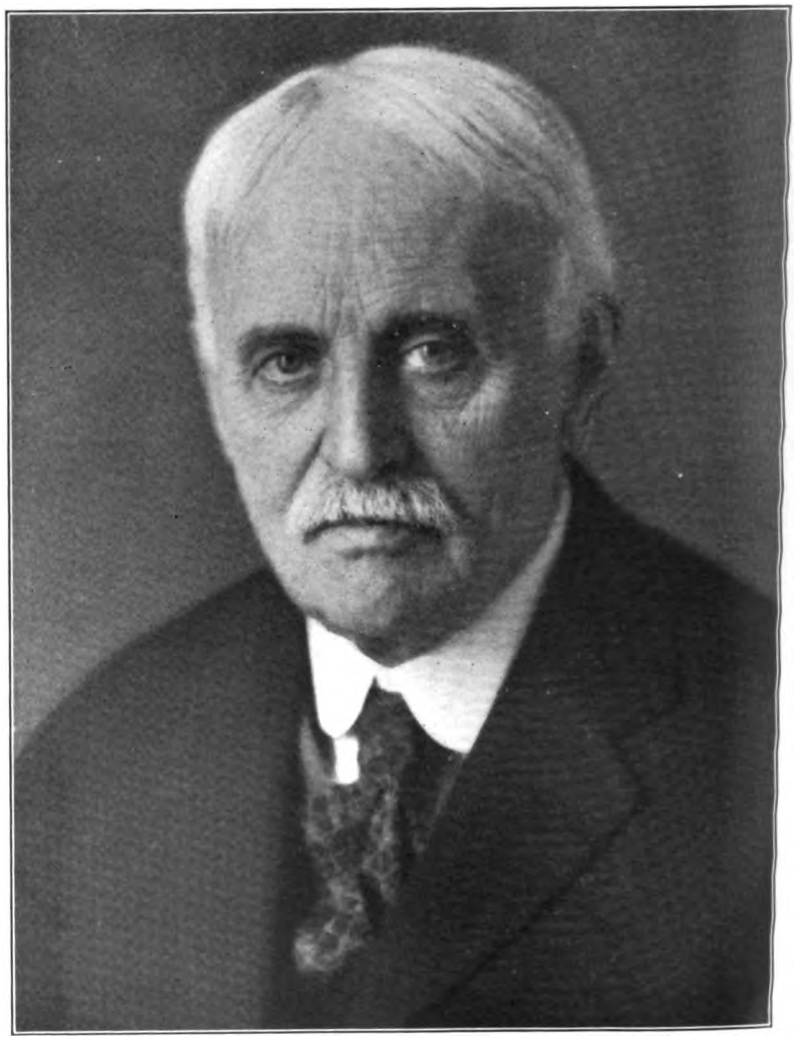

Thomas D. Luce

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PRESIDENT'S ADDRESS.

Early Makers of New Hampshire Common Law.

By Thomas D. Luce.

At our meeting last year the anniversary of the birth of our friend and former Chief Justice, Frank Nesmith Parsons, born September 3, 1854, was well celebrated with speech and song, with birthday cake to eat and candles to blow out. Surely that day and night well proved that the making of the common law had resulted in the making of uncommon friendships, and that we had not only engaged in the pursuit of happiness but had quite completely overtaken it.

Last year our President, Chief Justice Robert J. Peaslee, in his address spoke of Common Law in the Making; that it is made and not found; that it is a development; and that it grows in the only permanent way, line upon line, precept upon precept, here a little and there a little. I am now hoping to follow his example and to consider the making and also the makers of our New Hampshire Common Law, in earlier times. We are welcoming you all today to that part of our state which belonged to Massachusetts until 1741 when the boundary line was established. A recent English historian tells us that "An element common to all the colonies from Maine to Carolina was the frontier spirit. The frontier in American history does not mean as in Europe, a fixed boundary paraded by sentries, but is the term used for that part of the wilderness into which

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the white man had most recently penetrated. The frontier was always moving but the frontiersman was always the same. Certain characteristics were always found among the pioneers of the advance into the West: — hardihood, resource and courage, poverty and the hope of present betterment, democratic equality and the dislike of all forms of training and authority. The Revolutionary War was a civil war, not a war between two nations, though when the battle smoke at last subsided two nations were standing there erect."

A suggestion made in one of our annual meetings, that one of the New Hampshire state highways ought to bear the name of Daniel Webster, met with general approval. When Judge Parsons asked which highway should be so named, everybody agreed that the Merrimack Valley was the most appropriate location. The history of the state is indicated from mile to mile along its entire course. The more familiar scenes will suggest themselves to you: the ancient burial ground just below here, where lie the remains in one grave of eight men who were killed by the Indians in 1724; Dunstable Harbor, a place of refuge for the boats of the early settlers; the house of John Lovewell, supposed to have been an Ensign in Cromwell's army, and to have left England in 1660; the site of which is indicated by a tablet erected by the Daughters of the American Revolution. It is thought that Hannah Dustin stopped at this house for her first rest on her way home to Haverhill. Minute Men marched down this road on their way to Concord and Lexington.

At Thornton's Ferry, Daniel Webster and other lawyers crossed the river when they followed the judges riding the circuit, going from Portsmouth to Exeter and Amherst, then to Keene, Plymouth, Haverhill and Dover. In Bedford is the home of our late brother, Gordon Woodbury; that very ancient and honorable house of his

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ancestors, whose title is founded upon a royal grant made in 1723 and has never passed out of the family.

In old Derryfield, as you all know, lived another fighter who did much to make the common law and to preserve it,— John Stark of Bunker Hill, Bennington and Trenton. Washington said of him, "Colonel Stark is an officer who knows his duty and does it." Let us remember that peace hath her victories no less renowned than war. As we pass the home of John Stark, we always think of another officer who knows his duty and does it with an unsurpassed combination of accuracy and speed, our mentor and friend, Judge Peaslee.

At Concord the common law has been established and developed for many years and the history of the good work done there is well known to all. Let us hope that some time the detailed story of its progress may be written.

We have traced the line of law makers to Franklin, and do not forget that one of the very best of them makes his home in that city, — once our Chief Justice and always our friend, Frank Parsons. He tells me that his office has been occupied as a law office for eighty years or more. Judge Stanley is authority for a reminiscence of Daniel Webster in this connection. After he was defeated by General Scott as a candidate for President, Mr. Webster drove up in front of the office, which was then occupied by the firm of Nesmith & Pike, and spoke in that wonderful voice as follows: "General Nesmith, Colonel Pike, are you within? In these days a man doesn't amount to a damn unless he has a military title." In this connection I relate another memory of Webster, which was told at the house of Judge Isaac W. Smith when he invited a few friends to meet his classmate, Benjamin Franklin Ayer, then a leading lawyer in Chicago who formerly practised in Manchester. Mr. Webster came to Manchester to make a speech at a state fair toward the end of his career, when his personal popu-

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larity had decreased, and John P. Hale was making headway against him. Mr. Webster spoke with his usual ability, but after a time his political opponents in the crowd began to call for "Hale, Hale, John P. Hale." Webster became discouraged, brought his speech to an abrupt close and retired from the scene followed by his admirers. They went to the Ayer home and as soon as possible, some samples of the ancient vintage were brought from the cellar and the toastmaster said: "Gentlemen, are you all ready? Here's to Daniel Webster, a thunderbolt straight from the hand of the Almighty. Here's to Jack Hale, a stench engendered by the sulphur after the explosion. Drink deep, gentlemen."

When New Hampshire was divided into five counties in 1771, there were very few lawyers in the county of Hillsborough. For a long time no judge was a lawyer, for one was a doctor, another a merchant, another a farmer. It is small wonder that they knew very little of the forms of law. They considered that they were holding court to do justice and not to imitate the English practice.

It will be convenient in speaking of the development of our New Hampshire Law of Procedure to use the following classification indicated by Chief Justice Charles Doe and read at our annual meeting in 1892:

> "There are three principal periods of our law of procedure, — (1) the ante-technical era; (2) the technical era, chiefly introduced by Chief Justice Jeremiah Smith, and valiantly maintained on all points not covered by statute until (3) the restoration of the non-technical era by Stebbins v. Ins. Co., 59 N. H. 143, and Peasley v. Dudley, 63 N. H. 220.
>
> "First, the ante-technical era. From 1776 to 1782 Meshech Weare, who had studied theology but did not preach, was chief-justice; Matthew Thornton, a physician, and John Wentworth, a sort of lawyer, were his associates. Nathaniel Peabody and Jonathan

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Blanchard were attorneys-general, though neither of them a lawyer. From 1782 to 1790, Samuel Livermore was chief-justice, who, in charging the jury in a case, cautioned them 'against paying too much attention to the niceties of the law, to the prejudice of justice.' Josiah Bartlett, a physician, was his successor, of whom the biographer of William Plumer says, that 'when the law was with the plaintiff, and equity seemed to him on the other side, he was sure to pronounce in favor of equity.' John Dudley, of Raymond, a farmer and trader was judge from 1785 to 1797. A famous charge of his cited in King v. Hopkins, 57 N. H. Page 334 is reported to have been as follows: "You have heard, gentlemen of the jury, what has been said in this case by the lawyers — the rascals! But, no, I will not abuse them. It is their business to make a good case for their clients. They are paid for it, and they have done in this case well enough. But you and I, gentlemen, have something else to consider. They talk of law. Why, gentlemen, it is not law that we want, but justice. They would govern us by the common law of England. Trust me, gentlemen, common-sense is a much safer guide for us — the common-sense of Raymond, Epping, Exeter, and the other towns which have sent us here to try this case between two of our neighbors. A clear head and an honest heart are worth more than all the law of the lawyers. There was one good thing said at the bar. It was from Shakespeare, an English player, I believe. No matter; it is good enough almost to be in the Bible. It is this: 'Be just, and fear not.' That, gentlemen, is law enough in this case, and law enough in any case. 'Be just, and fear not.' It is our business to do justice between the parties. Not by any quirk of the law out of Coke or Blackstone, books that I never read and never will, but by common-sense and common honesty, as between man and man. That is our business, and the curse of God is upon us if we neglect, or evade, or turn from it. And now, Mr. Sheriff, take out the jury; and you, Mr. Foreman, do not keep us waiting with idle talk, of which there has

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been too much already, about matters which have nothing to do with the case. Give us an honest verdict, of which, as plain common-sense men, you need not be ashamed."

Theophilus Parsons, one of the greatest of Massachusetts lawyers, said of Judge Dudley, — "You may laugh at his law and ridicule his language, but he is, after all, the best judge I ever knew in New Hampshire." Arthur Livermore, a lawyer of distinction, speaking of Dudley, said: "Justice was never better administered in New Hampshire than when the judges knew very little of what we lawyers call law." On one occasion in which Jeremiah Mason had filed a demurrer, Judge Dudley said that demurrers were, no doubt, an invention of the bar to prevent justice, a part of the common law procedure, but that he had always thought them a cursed cheat."

An eminent man of the ante-technical period was Judge Ebenezer Webster, a fine type of the New England pioneer, in regard to whom I will quote from a memorial by Kate Sanborn:

"As a young man he fought with the famous Rogers' Rangers in the French and Indian Wars — at Crown Point, Ticonderoga, in Canada, and on many expeditions into the northern wilderness. 'When the alarm of war with England sounded,' to quote from Senator Lodge, 'among the first to respond was the old ranger and Indian fighter, Ebenezer Webster. In the town which had grown up near his once solitary dwelling, he raised a company of two hundred men, and marched at their head, a splendid looking leader, dark, massive and tall, to join the forces at Boston.' He inherited what was known as the Bachiler complexion, of which General Stark remarked with a grin that it was useful for a soldier, as no amount of gunpowder could blacken it."

At West Point when Arnold's treachery was discovered, Washington sent for Ebenezer Webster to guard his tent, saying with a smile, 'Captain Webster, I think I can trust you.'

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"His neighbors trusted Captain Webster as his general had done, and gave him every office in their gift. He was prompt, resolute and determined, but as Daniel Webster testified, he was also good-humored and facetious. 'He was religious, but not sour, having a heart that he seemed to have borrowed from a lion.'

"Of the value of inheritance of character from such a man, Senator Lodge says, 'There were splendid sources of strength in this man, the outcome of such a race, from which his children could draw. Force of will, force of mind, force of character; these were the three predominant qualities in Ebenezer Webster'."

In the spring of 1791, Colonel Webster was appointed Judge of the Court of Common Pleas for the county of Hillsborough. This office he held at the time of his decease, in 1806. He was one of the magistrates, or justices of the peace for Hillsborough County, for more than thirty-five years prior to his decease.

It was always a hard struggle to make a living for his family. Daniel Webster described the situation as follows: "My elder brothers and sisters were born in a log cabin, reared amid the snow drifts of New Hampshire at a period so early that when the smoke first rose from its rude chimney and curled over the frozen hills, there was no similar evidence of a white man's habitation between it and the settlements on the rivers of Canada." The history of his struggles to educate his sons, Daniel and Ezekiel, is well known. It appears by an early volume in the Hillsborough Registry of Deeds that his home was mortgaged to Phillips Exeter Academy. Shortly before his death, in 1806, his associates upon the bench, knowing of his financial situation, wished to appoint Daniel, Clerk of the Court. Their action brought inexpressible relief to the man who had spent his life for his country. Daniel's own story of what happened when he came home and told his father that he could not accept the office is one of the most pathetic inci-

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dents in our history. There is one fact, however, that has not been generally known, namely: that when Daniel declined, he knew that money would be provided with which to pay his father's debts. It is supposed that Christopher Gore of Boston, with whom Daniel studied for a time, not only advised him not to accept the office but furnished the money with which to pay his father's debts. Judge Webster's estate was settled in the insolvent course and the list of creditors includes the sum of $1,984.94 allowed Daniel Webster, and undoubtedly represents the loan from his Boston friend.

The "Life of Chief Justice Jeremiah Smith" by John H. Morison closes with a copy of the inscription prepared by his friends, Daniel Webster and George Ticknor, for the plain marble head stone where the Chief Justice was buried which reads as follows:

> "Here rest the remains of Jeremiah Smith: In early youth, a volunteer in the cause of the Revolution, and wounded at the battle of Bennington; afterwards, a representative in Congress by the choice of the people of New Hampshire, and an able and efficient supporter of the measures of Washington; a District Attorney of the United States, and Judge of the Circuit Court, by the appointment of Washington's successor; in years yet more mature, Governor of New Hampshire, and twice its Chief Justice: He was, at every period of his life, well deserving of his country by his courage, his fidelity, and his devotedness to the publick service; equalled by few in original power, practical wisdom, and judicial learning and acuteness; surpassed in the love of honor, justice and truth, by none.
>
> He was born at Peterborough, November 29, 1759, and lived in Exeter from 1797 till a few months before his death, at Dover, September 21st, 1842; always most loved in those circles of domestick affection where he was best known, and always a Christian, both by his convictions and by the habits of a life protracted,

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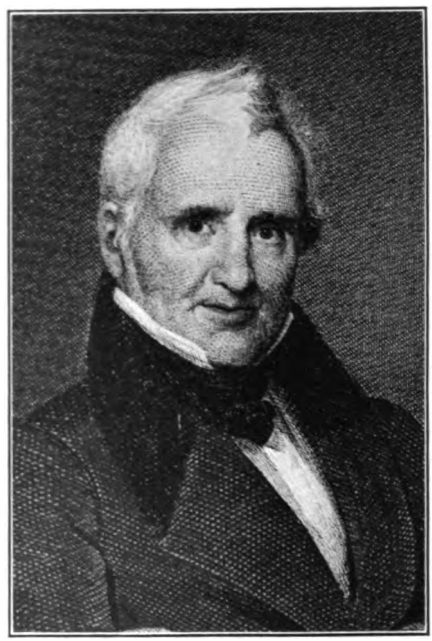

Jeremiah Smith, Senior

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in extraordinary cheerfulness and energy, to above four score and two years."

I will quote from this fine old book some informative paragraphs in different chapters, omitting quotation marks:

Before Judge Smith, there had been, on the part of the judges of New Hampshire, little attention given to the law as an established science. The justice of the case was held up as the law of the case; and the jury were to judge both of the law and the fact. Of course there could be no uniformity in the decisions. There were no fixed principles; but each case must have been decided according to the impulse of the jury, who could have no rule but their own fluctuating ideas of justice. It is not difficult to see what a door must have been left open for all the arts of the profession, the passionate appeals, the low cunning, through which law is neglected and justice set aside.

The same general remark applies also to the estimation in which he held the extreme refinements and subtle reasonings upon the law, which with very acute minds, hold the same place as minute forms, with minds of a different character. He knew how to analyze an intricate subject, to throw aside that which is not essential, and follow with singular acuteness each particular fibre, from the topmost branch to the very root. He knew, also, that the most important questions turn sometimes upon an exceedingly small pivot. But he had great confidence in plain, common-sense views, and though highly entertained by the exhibition (which he must often have witnessed at the bar,) of extreme logical ingenuity, he looked upon it as a perversion, rather than the legitimate use of reason, and always distrusted its results. After quoting Lord Eldon's remark, "There is no mistake so foolish, as to suppose a judge will not alter his opinion. I am sure it has often occurred to me, and I have set about to see if I could not alter my opinion" — Julge Smith adds, "I have seen a judge laboring to alter

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his opinion. He often succeeded, and often from right to wrong, abandoning a plain, sound, common-sense opinion, for one merely ingenious, plausible, &c."

Another quality, for which Judge Smith was eminently distinguished on the bench, was his business talent. To this he attached great importance. "When men," he says, "have been considering the qualifications of a judge, it is astonishing that they should overlook experience in business. Who can tell how much it contributes to despatch? It greatly exceeds acuteness of parts, or, rather, the latter can do little without the former." He required that every man connected with the court should be ready when his time came. By this habit of punctuality, by a more orderly and systematic arrangement of business, by seizing on the real points at issue, and excluding irrelevant matter, and especially by his own promptness and decision, he, without hurry or indecent haste, did much to avoid the wearisome delays which often clog the wheels of justice, and bring upon it so heavy a reproach.

Judge Smith always paid particular attention to young men; and there were many who gratefully acknowledged their obligation to him, for the encouragement he gave them as they were entering upon their profession. Perhaps the circumstances under which he was himself introduced to the bar, had always some influence upon him; but he had from nature, a warm sympathy and fellow-feeling for the young. He loved to watch their progress, and where he saw marks of real promise, could easily bear with the indiscretions that arise from want of experience, and the irregularities that proceed rather from the superabundance of animal spirits, than the superfluity of naughtiness. He was ready to pardon much to the ebullition of youthful feeling, provided that he saw, underneath, ingenuousness of character and a purpose of self-improvement. There was nothing on which he more, or perhaps more justly,

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prided himself, than the faculty of reading, in its early developments, the man's future history.

His father, William Smith, who, like the rest of the colonists, had immigrated from the north of Ireland, was on the paternal side, Scotch, and on the maternal, of English descent.

The Scotch-Irish were a serious and devout people. Nowhere, among the first settlers of New England, every part of which was sought for a religious purpose, were the ordinances of religion more solemnly regarded, or its truths more reverently received. And yet there was a love of merriment and wit mingling strangely with the most serious concerns. Judge Smith used to say, that they went to meeting on Sunday, practised all that was good in the sermon through the week, and laughed at all that was ridiculous. Some excuse for this is found when the quotation is made of a prayer in which the minister said, "Shake this people over hell but do not, oh Lord, let them fall into it." They were a Scotch race, who had been for two or three generations in Ireland, and they bore the marks of their double origin. There was a grotesque humor, and yet a seriousness and pathos, about them, which in its way has never been excelled. It was the sternness of the Scotch covenanter, softened by a century's residence abroad amid persecution and trial, wedded there to the pathos and comic humor of the Irish, and then grown wild in the woods among our New England mountains. At the funeral of one of Judge Smith's uncles, the coroner made some ridiculous blunders in reading his finding; the young could hardly keep their countenances, and soon a sense of the ludicrous had so prevailed, that the whole assembly, even the sisters of the unfortunate man, were overcome by it.

There has always been a well known distinction between the early settlers who were English and those who were Scotch-Irish. The English, as is well known, were great

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lovers of home, but when their homes were attacked and the principles of the common law were in danger, there was no limit to the steadfastness with which they took up arms for defence. The Scotch-Irish were more active and ready to act, especially when they felt that they had just cause for resentment.

To illustrate: Judge Doe was once speaking of what happened when Judge Charles R. Morrison, of whom Judge Peaslee was speaking last year, was presiding at a term of court in Dover. Mr. Christie, with whom Charles Doe studied, was making a statement when Judge Morrison in a somewhat disagreeable way stopped him by saying, "You need not pursue that point any further, Mr. Christie." Whereupon Christie answered, "Yes, Your Honor, I must pursue it, because my client has a right to have it stated." Mr. Christie still persisted and Judge Morrison said: "Sit down, Mr. Christie." Mr. Christie said, "No, Your Honor, I insist upon stating my client's rights." Then the Judge said, "Mr. Christie, pay a fine of ten dollars for contempt of Court." This was during the period when two side judges were a part of the Court, and it so happened that they were outside doing some nominal business such as approving accounts, or something of the kind. Mr. Christie glanced quickly at the empty chairs beside the Judge and in a colloquial voice said: "Well, Judge Morrison, really I see no Court present." Judge Doe concluded the reminiscence by saying: "That was a great day for the boys, because both Morrison and Christie were Scotch-Irishmen."

Judge Smith required strict attention to the law, even in its minute forms, and thought that exactness in form led to exactness in the whole mental discipline.

Daniel Webster said, that having practised in many courts, beginning with those of George Jackman, justice of the peace for the county of Hillsborough, who had held

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a commission from the time of George the Second, and going up to the court of John Marshall, at Washington, he had never found a judge before whom it was more pleasant and satisfactory to transact business than before Chief Justice Smith.

In January, 1805, Judge Smith wrote to Senator William Plummer: "What a mercy it is that I am not addicted to drinking, gambling, horse-racing, cock-fighting, or any other such like vices, for I am sure I should never leave them off, as long as I had liquor, cards, and money or credit, horses, cocks, &c. Some evil genius has been for years stirring me up, to look a little into the science of pleading; and my powers of resistance at this time happening to be weaker, or the temptation stronger, I have done, as good men have done before me, yielded, and am now enveloped in counts, bars, replications, estoppels, traverses, &c. You will say, and say justly, 'what the *deuse* has a New Hampshire lawyer or judge to do with special pleadings'?"

With Judge Smith there arose a new order of things in court. Those members of the bar who were diligent and attended to business were commended and encouraged; those who were negligent were lectured and reprimanded.

Referring to the common law of New England, Judge Smith said:

> "It is a great error to suppose the New England common law, properly so called, from the advances made in all branches of knowledge, is of no importance in New England at this day. For what is the common law of which we speak? It is made just as the English common law was made; a collection of the general customs and usages of the community; maxims, principles, rules of action, founded in reason, and found suitable to that first condition of society; if not created by the wisest and most favored, sanctioned and approved by them. Here, every member of society is

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a legislator; every maxim, which by long usage acquires the force of law, must have been stated, opposed, defended, adopted by rulers and judges, slowly and at first timidly, but so acceptably that all approve. If the custom be of a more doubtful class, again debated, criticised, denied, but finally confirmed and established. These principles, after all, may not be wise and salutary maxims; but they have all the wisdom that the people of all classes (every man having precisely the weight and influence he deserves,) can give them. Farther advances in knowledge and experience may demonstrate their unfitness and inutility; then they will be modified, and silently changed. The legislature can abrogate this law, as they can the rules of their own making. But it would be well for the people if they would first take the trouble to understand it. No man acquainted with the common law can look into our statute-book, and not see that the framers of the statutes, in many cases, were ignorant that the common law contained precisely the same provision; and in many cases, a provision different and better adapted to the wants of society. The new law must be repealed at the next session, because not congenial with the manners, habits, sentiments, feelings and wants of society."

Among the records which Judge Smith has left us of his private thoughts are these emphatic words — "If the world should be pleased to speak of me after I am dead, let them say, 'He was a judge who never permitted justice to be strangled in the nets of form'." But while laboring to introduce a practice conforming to strict technical rules, Judge Smith held always in great contempt those lawyers who, unable to grasp the law in all its length and breadth, would seize on some of its minute forms and make everything yield to them.

Judge Smith in the making of common law used technical forms of pleading. Being a brainy man and a good lawyer, he was naturally distressed with the poor condition in

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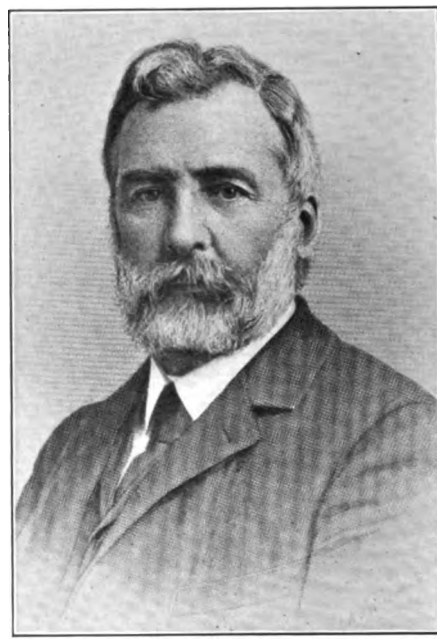

Jeremiah Smith, Junior

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which he found all the machinery of the law. He speaks of this in his opinions — that nothing was right; the writ was wrong; pleadings were wrong; everything was inaccurate. He was not a fault-finder, but he had an ambition to correct and to educate.

Judge Doe in after years said:

> "Chief Justice Smith found the law of New Hampshire in practice and administration a chaos, and left it comparatively an organized and scientific system."

The work Smith undertook was carried on by his successors, and the law was administered here as in Westminster Hall. In a certain sense it was an improvement. It brought uniform legal principles in place of such justice as had been done in each case by farmers, mechanics, clergymen, and physicians sitting as judges and jurors, and doing what they thought right without regard to law.

On the 14th of July, 1837, new interest in life was given to Judge Smith by the birth of a son to bear his name. A little later he wrote, "The boy is a source of pleasure to me far exceeding my expectations. I pray Heaven it may continue."

We all know that it did continue, for the son grew up among us and had his father's traits. He was a great lawyer, a good friend and a great teacher. With some of you he was an associate, always ready and willing to advise and to suggest the right management of the case. He was Judge of one of our highest courts from 1867 to 1874 and his able practice at the Bar is well remembered. Many of you were his pupils in the Harvard Law School.

The restoration of the non-technical era was announced in Stebbins v. Insurance Co. 59 N. H., 143 in which the holding of the court was as follows: "An amendment may be made, in any action, in any stage of the proceedings to prevent injustice. The form of action may be changed by amendment."

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This result was the end of a campaign which Judge Doe had carried on for several years. The time when an amendment might be made and the question whether the form in the action could be changed had led to many vexatious delays. Referring to these and other similar decisions, he said: "I am glad that the matter of amendment is cleared up at last." From that time on, judges, lawyers, and every one engaged in the betterment of New Hampshire common law took courage. The older men gasped and prophesied evil days which never came to pass; the younger men gave thanks and entered into a new freedom of thought and actions. The amount of money saved to the state under the working out of the law as stated in this decision alone is past calculation, not to mention the saving of time and money brought about by his many other wise decisions.

Judge Doe was considered the greatest law maker of all. The general opinion of lawyers was voiced by Brother Waite of Claremont at the opening of the old law term in Concord, when the minister had prayed for a blessing upon the law makers. Immediately after the "Amen," Brother Wait whispered to his next neighbor, Brother Colby: "He prayed for the law makers — that's Doe." As Judge Peaslee told us last year, Judge Doe harked back to the ancient makers of common law. According to his own expression, he felt that, having devoted two-thirds of his professional life to technicalities, he ought now to avoid them and try to do some good in other affairs. With him there was a reaction from the technical period.

In forwarding the restoration of the non-technical era, in cutting out needless formalities and returning to the beneficent practice of New Hampshire common law, the difficulties under which he carried on his labors must constantly be borne in mind. Physically he was far from

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strong and his life was a constant struggle. I am asking you to read in our Proceedings of 1916, "Memoirs of Judge Doe" by his student and our beloved Chief Justice and friend, Robert G. Pike.

I will also call your attention to certain facts told me by Judge Doe and others which I hope may give some additional information in regard to his characteristics and methods of practice. I fear that for many years he was in almost constant danger of a sudden attack of heart failure like that which ended his life. One morning in Nashua, Judge Doe, Judge Clark and I were walking on Main Street on the way to court. Suddenly without warning Judge Doe fell back a step and as he looked upward his face was ashy gray. It was all over in an instant and his breath returned. Later he said that fresh air was a vital necessity to him. He was always cheerful in spite of disease. Judge Jeremiah Smith gave an account of a trip to Europe in which he and Judge Doe were accompanied by several other friends. Judge Smith related that when beginning the outward voyage Judge Doe said to his companions that it was his wish that they should not address or speak of him as "Judge." They asked, "What shall we call you?" He said: "Call me Mister Doe, that will do well enough." His wishes were granted but much emphasis was given to the chosen word, "Good morning, *Mister* Doe." On the homeward voyage a prominent American lawyer talked often with the party but evidently did not notice the emphasis for at last he said to the judge: "By the way, Mister Doe, are you in any way connected with that famous New Hampshire Chief Justice Doe?" The answer came quickly: "Not near enough to mention."

While in Europe each consulted expert physicians, Judge Doe relative to his heart, Judge Smith as to a weakness of his lungs. On the return trip Judge Doe in his usual cheerful manner remarked to Judge Smith: "Well, Jerry, these

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European doctors don't seem to know much more about medicine than you and I do about law."

A good illustration of the skill with which Judge Doe avoided technicalities, which would result in injustice, is indicated by his action under the following circumstances: A law student who had been studying in an office and law school two years and nine months desired to be examined for admission to the Bar without waiting until he had studied three years, as then required. His chief reason was the illness of his mother who had worked hard and faithfully in the care of a large family and was not expected to live until her son should become a lawyer. The student wrote to Judge Doe stating the circumstances and immediately received word that he had written to Judge Stanley who had charge of the examinations, suggesting that the request be granted. Judge Stanley so ordered and was the first to congratulate the student upon his admission.

One day toward the end of his career Judge Doe spoke to me somewhat as follows: "I find that I will not be able to try any more jury cases. For example: Just before the jury is drawn the plaintiff's lawyer says to me, 'Your Honor, this is a 'Horse case'.' Now in my experience, I have tried every possible form of a 'horse case' and I know what the lawyers are going to say before they begin and I am losing my patience. I find it impossible to wait for what statement they have to make. It's no use." After this time I think he tried two jury cases. His customary way of trying to speed up matters was by saying: "Motion denied. Proceed! Proceed!" No lawyer was too fast for him.

Judge Doe devoted much time to making new forms and giving advice to lawyers and others interested in relation to them. Upon one form which did not quite suit him, he commented as follows:

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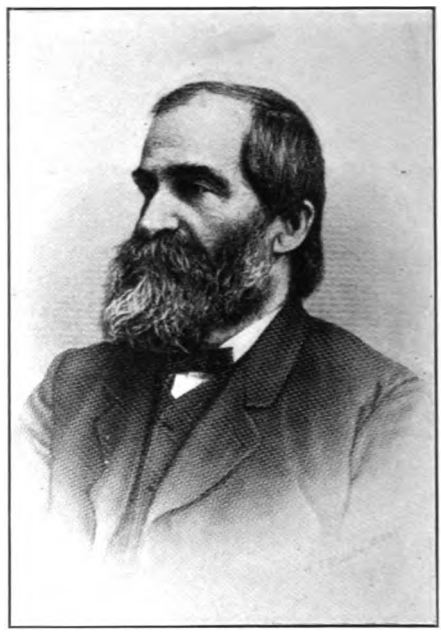

Judge Doe

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> "It is a great feat of ship-building to construct a yacht to sail as near to the wind as possible. Mr. Christie did not train his students in that kind of skill. His rule was to run no avoidable risk."

Jeremiah Smith, Sr., and Charles Doe were certainly very much alike. Their sense of humor doubtless kept them both alive and added to the usefulness of each as a presiding justice. Many times when Judge Doe was presiding at a jury trial the "sense of the ludicrous" so prevailed that he was obliged to announce a recess in order that he might have a good laugh in his own room.

Judge Doe's position in regard to necessary changes in practice recalls a quotation from Rufus Choate's Discourse Commemorative of Daniel Webster:

> "We ascribe to him certainly a sober and conservative mind, and such he had. Such a habit the study and practice of the law doubtless does not impair. But his was my Lord Bacon's conservatism. He held with him, 'that antiquity deserveth this reverence, that men should make a stand thereupon, and discover what is the best way; but when the discovery is well taken, then to make progression!' "

At the opening of the Adjourned Law Term of the Supreme Court in Concord, on the 13th day of March, 1896, services were held in memory of Charles Doe. Remarks there presented were printed as a part of the Proceedings of the Association. The following extracts express the feeling which was universal among his friends and associates:

Judge Alonzo P. Carpenter said:

> "Judge Doe sat on the bench almost thirty-five years — longer than Marshall, Taney, Shaw, or any other judge in this country so far as I know — longer certainly than any one whose name is worthy of mention in connection with his, longer also than Lord

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Mansfield or any English judge with the single exception of John Heath, who was a justice of the Common Pleas from 1780 to 1816.

"Of all the common-law judges, both in England and this country, who are usually spoken of as great judges, not one can be named who has exercised so potent an influence upon the jurisprudence of his country or state as Chief Justice Doe, unless Chief Justice Marshall, whose title to fame rests mainly on his interpretation of the provisions of the federal constitution, is an exception.

"No general review of his work would be now appropriate. One great reform may be mentioned. With the concurrence of his associates, and by a wise and liberal application of the principles of the common law, he has made our legal procedure simple, speedy, and inexpensive. There is no common-law jurisdiction, it is believed, where one's legal rights can so quickly and cheaply be established as here in New Hampshire. In this respect he accomplished, without the aid of legislation, what other states have sought to obtain, and have signally failed to obtain, by the enactment of codes. If during his long term of office he had achieved nothing else, the people would owe him a debt of lasting gratitude."

Judge William L. Foster said:

"May it please the court, — it is impossible to regard without emotion the vacant chair of the Chief Justice. Through many long years we have been accustomed to his presence. In the vigor of strong manhood, and in the encroaching feebleness of bodily decline, we have found him at the post of duty, and though the lines of care and suffering upon his face had become pathetic, his mental vigor was unimpaired, and the sense of his sudden removal comes upon us with a shock.

"The first sensation we experience is that of an irreparable loss, but we immediately realize that no

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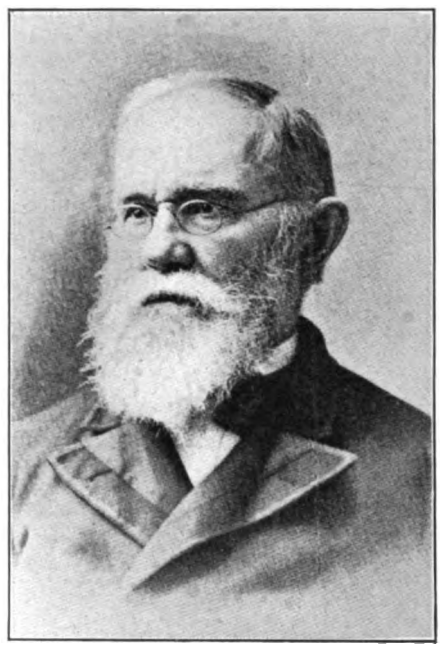

Christopher Columbus Langdell

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human loss, however great, is disastrous. Great men come and go, great judges come and go, and still without interruption the courts go on, justice abides forever, and the majesty of the law is undisturbed. We bow our heads under the weight of a deep and heavy sorrow, but we lift them again with a sense of gratitude for the blessing of a life devoted for more than thirty-five years to the service of the state.

"The impress of that life upon the jurisprudence of the state, controlling, reforming, perfecting, and adorning it, is imperishable. Disassociated from his public service the memory and example of a life of strict integrity and purity is our perpetual heritage.

"There seems to be a sort of compensation and antidote for our grief in the contemplation of the manner of our friend's departure, such as he himself expected and desired. Think of it. Think of it without complaining sadness. Last Monday morning he left his home and family, with no anticipation of harm, to attend to the business and duties of this term of court; arrived at the railroad station at Rollinsford, and was awaiting the coming of the train which should bring him to this city. As he sat there, no doubt his ever-busy brain was engaged in some problem of the law, which you, his associates, will this day consider. To him, and to those about him, there was no warning of a silent and unseen presence, but voiceless and invisible the Angel of the Lord passed by and touched him with a finger, and he slept.

"In a moment, in the twinkling of an eye, for him all was changed. In an instant the problem was solved. All cloudy darkness was lifted, and he saw the light of an everlasting morning. No more perplexity, nor sorrow, nor care. No more weariness nor fatigue, but sweet slumber and refreshing rest; for so 'He giveth His beloved sleep'."

Men who arrange the Common Law and make decisions and principles available must certainly be counted among the makers of the law.

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Judge Jeremiah Smith in his appreciation of Professor Langdell, printed in our Proceedings for 1906, wrote as follows:

> "In the summer of 1844 a young man working in one of the Manchester factories told David Cross, Esq., that he wanted to acquire an education and to become a lawyer, and asked advice as to the methods to be pursued. Judge Cross, then a law student and now the veteran of the New Hampshire Bar, gave friendly advice and encouragement, and the young man, though wholly dependent on his own exertions, resolved to begin the struggle. Like most people, he probably had his visions of future success. But in his wildest dreams he can hardly have anticipated his ultimate achievements. He became the foremost legal educator of his day; he did more than any other single man to revolutionize the methods of legal study; and his name as that of one of the great lawyers of the age became known and respected by the most eminent jurists among English-speaking people.
>
> The young mill operative was Christopher Columbus Langdell, who was born at New Boston, N. H., May 22, 1826, and died at Cambridge, Mass., July 6, 1906."

The following quotation is from Professor Wambaugh:

> "And the man himself? Guileless, and shrewd; grave, and cheerful; modest, and fearless; not given to speech; persistent in the search for truth — on the last day of his life, though oppressed by infirmities, doing a full day's work; in short, the man's whole nature harmonized with his rank as a great master."

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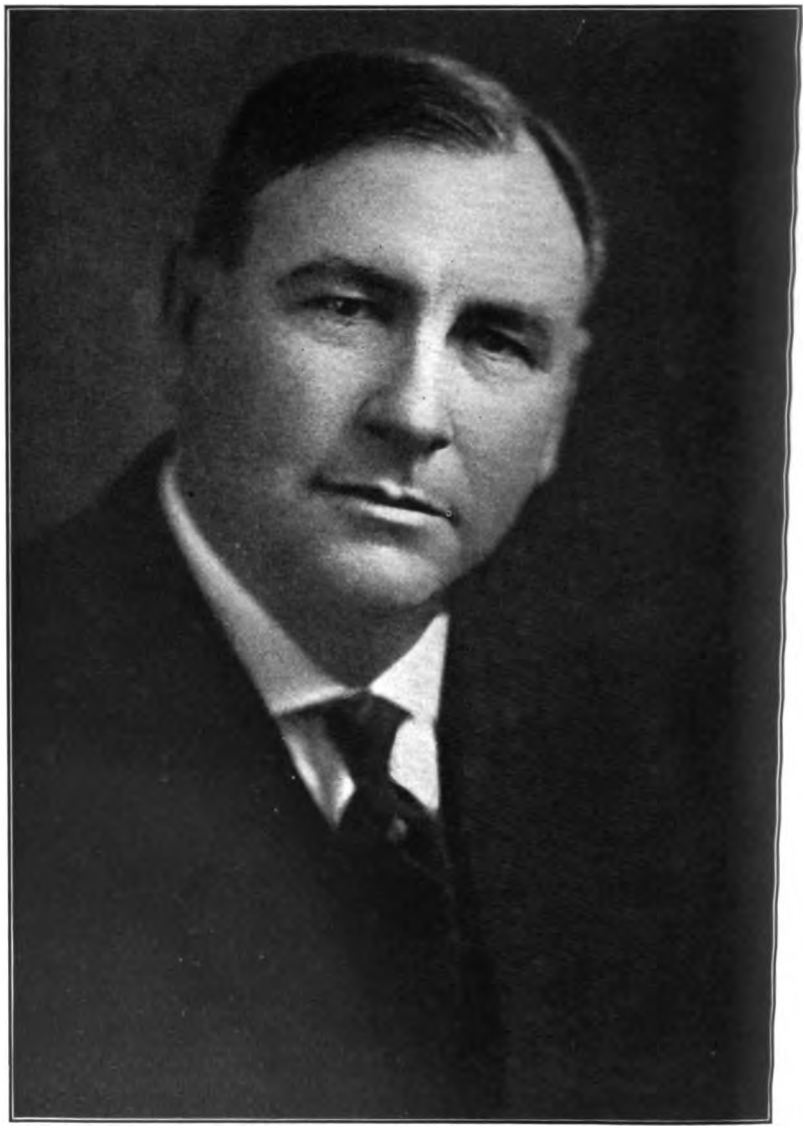

Honorable Harlan Fiske Stone

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ANNUAL ADDRESS.

OBEDIENCE TO LAW AND SOCIAL CHANGE.

By Honorable Harlan Fiske Stone.

Associate Justice of the Supreme Court of the United States.

My own birth in the State of New Hampshire and three generations of ancestors sleeping among its granite hills are in themselves a call to respond to your invitation which it would be difficult to resist. But the fine tradition of your bar, the historic part it has played in transplanting the common law to these shores and the standards of professional excellence which are suggested by such names as Webster, Mason, Smith, Woodbury, Bartlett, Atkinson and Plumer, to say nothing of the distinguished members of the bar of a later generation, add to the attractiveness of your invitation and to its significance.

I well remember an occasion some years since when as a member of an American Bar Association committee I sent out a questionaire to members of the boards of bar examiners of the several states and I recall the answers which came from your own board as indicating a grasp of the essential problems of bar admission and a just appreciation of the responsibility resting on it which augur well for the future of your bar. I mention this occurrence because I cannot escape the ever growing impression that upon our bar, state and national, rests today a larger responsibility for securing improvement of our laws and their adminis-

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tration than ever before in the history of our country. For our system of law and our competency to administer it are being put to the test as never before and my mind dwells with satisfaction on any circumstance which indicates that the bar is meeting that responsibility.

The time was when New Hampshire in common with her sister colonies was able to adminster a rude system of justice with few laws and fewer lawyers. For more than fifty years after the organization of its Supreme Court of Judicature in 1699 no practising lawyer was appointed to its bench and its widely known chief justice, Livermore, although a member of the bar, had little respect for precedent and sat on the bench from 1782 to 1790 with associates who were not lawyers. Charles Warren in his History of the American Bar in speaking of the early legal history of New Hampshire says of it, "There was small need or opportunity for trained lawyers and the bar of New Hampshire during the 17th and 18th centuries was consequently few in number. In the former century there was only one educated lawyer in the Province" but he adds "by the beginning of the nineteenth century the bar was one of great lustre so that even Judge Story used to speak of its 'vast law learning and prodigious power'." In 1805 the New Hampshire bar comprised 105 lawyers of whom 77 were college graduates, and it listed upon its rolls the names of those who will always be counted among the leaders of the American bar.

These striking changes but record the change in social and economic conditions which make lawyers and the growth of law a necessity.

In a rude society spread over a sparsely settled territory the problems resulting from human contacts and the clash of human interests are too few and too small to require any artificial legal solvent. But with the increasing complexity of human relations there comes the necessity for law to reg-

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ulate and control them, and the necessity for its effective and orderly administration.

That administration may be despotic, and thus the services of a highly trained bar dispensed with. The Russian Empire was not without its system of laws but there were fewer lawyers under its despotic sway in proportion to the population than in any other nation in the western world. But if liberty under law is to be maintained and if law itself is to be adapted to the social and economic needs which it is created to serve, its administration must be entrusted to a trained bar whose members are inspired with zeal for liberty and justice, and who comprehend the significance of those adjustments which must be made by law to changing social needs and conditions. That is the role which the bar undertakes to fill in a democracy such as ours, an undertaking which carries with it a large measure of responsibility for the results obtained.

There are those not wholly without justification who insist that those results are not altogether satisfactory, who point out the defects of our legal system, the lack of symmetry of our common law, its uncertainties and complexities, the crude structure and futility of much of our legislation, the lax and ineffectual administration of our criminal law, the increase in crime and the growing lack of respect for law and the by no means unrelated fact that the average quality of the bar in point of general education and individual fitness to meet the responsibilities which society is entitled to place upon our profession, is lower than it was a hundred years ago.

Of especial concern to the public and to us is the alarming increase in disobedience to law. Its most striking manifestation and one which has excited widespread public attention is in crimes of violence apparently far exceeding in number similar crimes in other countries. But it is a manifestation not limited to major crimes. It is widely ex-

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tended to minor offences, and there are included among the offenders an increasing number of our population who do not belong to the so-called criminal classes until it would seem that the sense of responsibility for obedience to law of great numbers of our citizens had become dulled if not seriously impaired.

This arraignment, while not directed to the bar alone, is nevertheless one which the bar must answer. Indeed its position should not be wholly defensive as has too often been the case. It should be ready and eager to inquire into the truth of the indictment, to search out the defects in our system of administering justice and to exercise its rightful leadership in seeking the remedy.

To some counts in the indictment it must of necessity plead guilty and urge in extenuation of the offence, its activity in recent years in great undertakings for the technical improvement of the law and the strengthening of the bar. But to others it may plead by way of confession and avoidance, and to still others it may tender the general issue and in support of its plea offer evidence that others than mere lawyers are the real offenders, and, before sentence passed, it may tender its good offices to reform the culprits.

It is a commonplace that the law is but the reflection of our social experience. It has the advantage and is subject to the disadvantage that it is a reflection not immediately attendant upon the events which collectively make up that experience.

To quote from an old friend and a distinguished lawyer and historian, John Bassett Moore, Judge of the Permanent Court of International Justice, "Law is supposed to incorporate, not the exaggerated or disproportionate impression freshly created by isolated events but the mature condensed expression of the cumulative results of long observation of human activities and needs."

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It is the element of slow maturity, the necessity for the requisite interval of time for condensation and just appraisement of human experience which constitute both the strength and weakness of any system of law. Slow growth gives that toughness of fiber, that solidity of structure which have made the common law the dependable prop of the state throughout the English speaking world. But it is inevitable that at times in the history of human affairs, the swift progress of events with the attendant accumulation of the undigested data of experience should outstrip the development of the law, since the necessary process of condensation of our observation cannot keep pace with an accelerated human experience.

Perhaps in no era of the world's history has that condition been as pronounced as in our own times. In 1809 Jefferson wrote, "We are a rural farming people. We have little business and few manufactures among us and I pray God that it will be a long time before we have much of either." But today ours is a great business and industrial civilization such as the world has not seen before. Most of us have witnessed what would appear to be the culmination of the industrial revolution, in the course of which individual initiative and independence of action by the individual worker have been submerged in the processes of standardized production. With that change has come the shift of population from country to city and the social and economic changes necessarily involved in the new business and industrial order and in urban dwelling.

As a result of our long continued policy of unrestrained immigration these changes have been accompanied by such a mixture of races as had not occurred before in modern times. The newcomers not only brought with them a different culture, different habits and a different philosophy of life than our own, but they included in their number many undesirables, unaccustomed to the freedom from

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restraint which they found here and unfitted to exercise the privileges which were freely accorded to them. In very fundamental ways neither they nor their descendants have been assimilated into our national life. Available statistics of crime in this country, which I am quite willing to concede are neither comprehensive nor in all respects dependable, seem to suggest nevertheless that the foreign born and those born of foreign parentage have added materially to our problem of disobedience to law.

In the short space of our own lifetime we have witnessed greater progress in the mechanical arts, in invention and in man's control and application of physical forces than had been achieved in the entire previous history of mankind. In a single generation our conception of the limitations of space and time have been revolutionized and the sources of physical energy and the methods of its employment have been multiplied many fold.

The effect of these changes on man's physical well being are for the most part obvious, but the social changes they are bringing about and their ultimate effect on human conduct and on man's spiritual nature are only vaguely and imperfectly understood. Sufficient time has not yet elapsed to enable us to grasp their true significance or to value them at their true worth as must be done before they can be reflected in law. Nor has there yet been a sufficient time to adapt the machinery of law enforcement and the methods of its operation to the new social and economic conditions. The difficulties of bringing our legal system into complete harmony with man's new estate are, at least, not diminished by the fact that man's conquest of the physical world has not been attended by a like progress in the realm of ideas, in his knowledge of the functioning of society or in man's spiritual nature. We are propelled through space with higher velocity and with greater ease than ever before. Our ideas are transmitted more easily and by a greater

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variety of methods than hitherto, but there is little evidence that our movements are more purposeful or effect more favorably our social environment and it cannot be said, I think, that our ideas are more worthy of transmission or effect more favorably the recipients of them than those of the generation which travelled in stage coaches and which was ignorant of the blessings of the radio, the movie and the automobile.

With these new and uncertain social tendencies, with new and difficult problems of social organization confronting us with ever increasing rapidity, our capacity for solving them has apparently not increased and a sufficient period of time has not yet passed to enable us to condense the observations of our experience and to view it in its true perspective with relation to its historical setting.

The data on the basis of which the necessary adjustments of law to social change are to be made are thus lacking and when the seasoned observations of experience are wanting in the field of law there is danger that speculation and emotionalism will hold sway.

Disregarding the tendency of society to cure its own ills through the restorative action of time and through its moral resistance to social fault, and impatient of immediate results, we seek a remedy in law before we know the nature of the disease. It is then that we are exposed to all the dangers of attempted social adjustment by legislation whose real applicability and successful operation are rendered doubtful from the outset because it does not rest on the solid foundation of observed and appraised experience. There is the danger, too, that the point will be reached in pressing for the enactment of legislation which is not thus founded where the strain placed on an overburdened administrative system will be of more serious import than the evil sought to be corrected, where a law in itself socially desirable works social harm because it affords opportunity

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to lodge in our administrative system the seeds of corruption and official indifference to law breaking.

The *bloc* and the paid propagandist, new manifestations in our political life, have not been slow to take advantage of our predisposition and to accentuate the dangers which are incurred by legislation which does not rest on a normally developed public opinion or is not the product of observed experience rather than of propaganda and emotionalism.

We can never dissociate from the law making process, whether it be by legislation or the development of unwritten law, the significance of the public intelligence, of public opinion and the social conscience. From them all law must derive its real sanction and its real potency to fulfill the only function for which it can be legitimately created. Law may be defective and fail of its purpose because it does not faithfully reflect the public intelligence and the public will and this may come about because of defective technique in the process of law making; or of our failure to interpret understandingly the public will and the public conscience. But law may also fail to secure effectively its objective because the public intelligence and the social conscience themselves require education and reformation.

No amount of technical skill could draw an effective and enlightened code of laws for a tribe of savages for the simple reason that law cannot rise above its source in the customs, morals and social experience of the people to whom it is to be applied and if we pass to the other end of the social scale, civilization itself may at times develop in such a one-sided fashion and with such distorted notions of relative values and of the fundamental principles of social organization that it finds expression in a system of laws with corresponding defects.

Hitherto we, as lawyers, have proceeded on the theory that the remedy for the defects in our own system is to be found almost exclusively in an improved technique. Sta-

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tutes must be better drafted and more skilfully compiled; the common law must be re-examined and restated and in the process purged of its obsolete rules and anachronisms; procedure must be reformed.

I do not decry these aims. Indeed in such ways as have been open to me I have stimulated and encouraged them. They are the necessary and appointed tasks of our profession and the disposition of the bar to undertake them is one of the encouraging signs of the times because it indicates a new and developing sense of corporate responsibility of high importance to the future of our profession and to the orderly progress of our law. But on more than one occasion in the past two years I have improved the opportunity to direct attention to the fact that our efforts to improve law on its technical side have been limited to too narrow a field. Hitherto the rules of substantive law and procedure have engaged our attention. We seem to have assumed, unconsciously perhaps, that wise laws are self-executing; that with a perfected system of substantive law and a suitable court procedure the law of the books would translate itself into action as an efficient agency for the control and regulation of human activities. But this assumption leaves out of account the purely administrative processes which must be set in motion and effectively directed before law can be called into action and it leaves out of account the necessary balance which must exist between the machinery of enforcement and the law to be enforced.

It is of small consequence if we secure a perfect legal definition of crime and a highly simplified and reformed criminal procedure if the methods employed for the detection and apprehension of criminals are of the stage coach era directed against criminals who make use of high power automobiles and modern business methods; if the offices of public prosecutors are badly organized and subject to sinister political influences; if we continuously pass laws with-

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out reference to the essential administrative difficulties involved in their successful enforcement.

It is the administrative feature of our legal system which has received the least attention but which offers the most fruitful field for study and investigation and the highest promise of tangible results. To conduct it profitably we require not only scientific skill and devotion but more accurate and comprehensive data with respect to law violation and law enforcement than have hitherto been made available. We must recognize at the outset that all improvement of the administration of our criminal law must at least begin with accurately gathered and scientifically classified statistics which will reveal more certainly wherein the administration of justice is failing and the nature of the difficulties to be overcome.

But the point which I would particularly emphasize at this time is that too much reliance cannot be placed upon the successful performance of these undertakings, of themselves, to bring about the legal millenium; that back of all these devices there must be the popular passion for legal justice and popular understanding of and faith in its processes and that individual self-restraint, which has its source not in law but in social morality, before we can hope to repair some of its more obvious weaknesses. In short we must recognize that the hope of improvement and the indispensable pre-requisite for improvement on the whole lie without rather than within the technique of our profession.

All the recent varied activities to secure greater respect for law and more effective enforcement of it, which have been stimulated by the apparent increase in crime and the slowing up of the machinery of law enforcement made recognition of this truth of high importance if those activities are to result in any substantial permanent gain. Before real progress can be made we must recognize that we

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are now in a period when prevailing social tendencies and popular beliefs tend to affect adversely the orderly evolution of a well balanced and effective legal system.

The extraordinary development of the mechanical side of our civilization has perhaps given us our mechanistic philosophy of social institutions. Certain it is that never before in history has any people exhibited such a child-like and implicit faith in the efficacy of legislation to bring about the social Utopia as have our own people in our own time. Forgetting that social custom and the average moral standards of the community are more potent in the control of human conduct than formal law, we nevertheless seem to regard statute making as the chief and only ultimate agency of social reform and the never failing means for the minute regulation and control of all human activities. The vice of this procedure is that it leaves out of account the evils which inevitably flow from the attempt to impose rules of conduct by legal command which do not have the moral support of the great mass of the community or which are not of sufficient importance to arouse active public interest in their behalf. Ponderous volumes filled with statutes which by common consent are ignored or are only partially or occasionally enforced are a heavy burden on the spirit of obedience to law and they represent a costly experiment in government. For whatever advantages we gain from a partial or inadequate enforcement of the rule we adopt we pay a high price in loss of respect for law and law enforcement agencies, and in the danger of breakdown of our administrative machinery.

Our faith in legislation as the universal panacea for all the irregularities in human conduct tends constantly to carry legislation across the boundaries of that considerable area of human conduct which lies outside the province of positive law, because it can only be suitably regulated and controlled by the conscience of the individual or the moral

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sanctions of public opinion. Yet it is in the cultivation and expansion of this area that the hope for the successful issue of our great experiment in self government chiefly lies. Government in a democracy cannot long function satisfactorily without a developed sense of moral responsibility and self control in the individual which recognizes social standards and the force of public opinion as such regardless of their legal sanctions. Over-much legislation and the minute regulation of conduct by law encourage the substitution of the legal standard for the moral and social standards of accountability. Once the moral or customary rule of behavior is made the legal rule we are disposed to place all our reliance on the statute itself to control action and to abandon our efforts to maintain and strengthen its moral and social sanctions and on the other hand we incline more and more to the belief that whatever is not prohibited is to be deemed permissible and the moral and social inhibitions on individual action which is not forbidden by law approach the vanishing point.

Nor in appraising the tendencies which affect our legal system adversely, can we leave out of account the changing popular attitude toward the fundamental principles of human conduct which lie at the root of law and law enforcement, and which must ultimately affect profoundly the necessary adjustments of law to the realities of life. That this change has been accelerated by our habit of extending legislation to the minutiae of conduct and our narrowing the scope of individual self control and restraint by legal enactment seems reasonably certain, but the causes lie deeper in the social changes which have been going on in American life for a full half century or more which have tended to break down traditional family life, to impair our sense of relative values and to lighten social restraints and the self control of the individual.

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There is a disposition too, stimulated by our rapid advance in the mechanical arts and profoundly influenced by the convulsion of the recent war to regard the present as a unique and isolated experience, so unlike any period of the past as to render the experience of the past of little value as a guide for the present or the future. If we were more diligent students of history we would recall that the world has passed through similar periods, usually as the result of a great armed struggle not differing in essentials from our recent war and we would recognize that in law as in other human affairs, we forget and place at hazard the future when we disregard the past.

We have been so busily engaged with the employment of the devices for the annihilation of time and space that we have had little opportunity or inclination for the cultivation of those homely virtues which are the secure foundation of any legal system. That crime is more rampant than in our earlier days is not wholly unrelated to the decline in the control of youth through family discipline. Such statistics as are available reveal the significant fact that a high percentage of the crimes of violence are committed by mere youths or by young men under twenty-six years of age. We cannot expect that the youth, unacquainted with the exercise of parental authority or the restraints of a well-ordered family life will himself exercise self control, under stress or bow submissively to the authority of law.

When we are told with apparent justification (although here again the statistics are at most only persuasive evidence on the subject) that a disproportionate number of these youthful criminals are foreign born or of foreign parentage, we realize the consequences of our failure to assimilate in any real sense those whom we have invited to our shores from foreign lands and if we apply common sense to the problem we must recognize that an evil which has been developing for a generation or more because of our neglect

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and indifference to a vital social problem will not be speedily cured by the application of mere technical remedies. The attitude of youth toward law breaking and his ideas of law and the agencies of law enforcement are likely to be very different from those which prevailed in an earlier generation. His visualization of them and their processes is the picture painted by the daily press and the movie, often exaggerated or distorted out of its true perspective and usually colored by sensationalism and a maudlin sentimentality. In the end there can be no question as to the nature of its cumulative effect on the popular mind. Taste is debauched and our sense of fitness, of reality and of relative values is undermined. The ugly but essential truth that the lawbreaker is the enemy of society and that failure to prosecute and convict him means either that the agencies of law enforcement have been corrupted or are breaking down and that with that comes the breakdown of society itself is glossed over and obscured by the repeated dramatization of the acts of criminals and of the processes of the law. It would indeed be surprising if this persistent and subtle influencing of the public taste and opinion did not have its effect, unconsciously perhaps on all those concerned with the enforcement of the law or if the weaker members of society were not thrown off their balance and into the growing class of those who are law breakers or who endorse or minimize law breaking.

I alluded a few moments ago to the social changes which are being brought about by the industrial revolution and by the progress of invention and the mechanical arts and to the fact that the character of many of these changes is still uncertain and obscure, but I think it may be agreed that they have brought about two changes with their consequent effect on the popular attitude which are clearly defined although it is not yet possible for us to foresee all of their consequences. The one is the increase in the hours

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of leisure of the average individual made possible by the new methods and appliances of industry. The other is the rapid increase of wealth made possible by those methods and appliances and by the appropriation of our natural resources.

Neither leisure nor wealth are necessarily evils nor are they unmixed blessings at least before the fortunate possessor of them has learned the uses to which they should be devoted, but there is nevertheless a widespread popular belief that the leisure which comes from the freedom from the necessity to work and the acquisition of wealth without that necessity are in themselves the supreme satisfaction to be gained from human existence.

I need not urge in this presence that these are false ideals based on a false and dangerous philosophy of life. The blind pursuit of them is nevertheless increasing the number of our population who are rapidly acquiring wealth or leisure without a compensating sense of responsibility for their wise use and it is not surprising that there is to be found among them a growing number of those who are not over scrupulous about the methods they adopt to attain the supremely desired end. The effect of this new popular philosophy upon our attitude toward obedience to law cannot be weighed and measured by definite standards, but we cannot close our eyes to the fact that it has its influence upon our regard for law and on our habit of obedience to it quite as important as any technical devices which can be invented for its enforcement and that in another generation that influence on the fabric of our legal institutions may be as profound as our neglect of the problems of immigration and the assimilation of the foreign elements in our population are proving themselves to be.

In the field of economics we encounter the same striking changes and very similar difficulties in bringing an old system, organized and developed under older and different

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conditions into adjustment with the new order. The problem of effecting that adjustment although by no means a simple one is nevertheless much less difficult than in the case of those social changes which are not essentially economic although their underlying causes are for the most part economic in character. The process consists in a better understanding of the economic organization of society and the technical adaptation of law, both legislative and unwritten, to that economic structure. It is a simpler process because the economic changes of the past generation are more clearly defined and more readily understood than are the social changes which have accompanied them. It involves only incidental social reforms whereas the satisfactory adaptation of law to social changes, non-economic in character involves as I have suggested a large measure of social reform which can be brought about only by the processes of education extended over a considerable period of time. Adaptation of law to our economic structure is peculiarly the task of the lawyer and the legislator and a glance over the legal and economic history of the past fifty years should convince one that the most serious obstacles to effecting that adjustment have been overcome.

The adjustment necessary to bring about a more ready respect for and obedience to law and a more effective enforcement of law present more serious difficulties. They are not grounds for pessimism but they are the occasion for serious concern and for a serious self-searching of our national life as well as of our professional and technical accomplishments. Especially should they encourage us to explore beneath the mere mechanism of law enforcement for the more fundamental causes springing from our new social order.

You may ask, if my belief is well founded that the capital influences which are adversely affecting the development of our legal system are too great a reliance on positive law and

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on the technical reform of law and too little on a more general understanding of the functions of law and of the principles which should govern human conduct and social morality, then what have lawyers and judges to do with the problem?

That the chief responsibility for what I have referred to as the technical improvement of the law rests upon us is obvious. That we must carry our efforts to effect that improvement more into the administrative side of the law, encouraging the study and investigation of all those agencies and processes which directly affect the translation of law at rest into law in action and that we should encourage the systematic gathering of statistics and other data on a more comprehensive scale than has yet been attempted in order to provide suitable material for those studies, is likewise obvious.

But it is at least equally important that we first convince ourselves and then convince the lay public that the hope of our legal salvation cannot rest wholly on the success of these enterprises; that it must depend in large measure on a more intelligent popular understanding of the true function of law and the relation which the average standards of right conduct, of individual self-control and a sense of social responsibility bear to obedience to law; that there must be a more general recognition that in the life of the family we observe, in microcosm, the functioning of society and of government and as family life is well ordered so also is the life of society at large and our obedience to governmental authority as it finds expression in law likely to be well ordered.

The hope and safeguard of democracy is education, not that so-called education which would popularize learning at the cost of a sacrifice of standards, nor education in the narrow and technical sense, but the education which enlightens the masses as to the right relationship of the individual to the organization of society and inculcates a sense

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of individual responsibility for the preservation of that relationship on a sound basis of which law is only the outgrowth. In that type of education it is not only proper but necessary that our profession should exercise a guiding influence.

Our brethren of the medical profession have long since recognized that its activities should not be limited to the technical aspects of medical science but that it is its function to participate in the process of popular education affecting public hygiene and the prevention of disease. The steady progress in the prolongation of human life in the last fifty years is very largely the result of this type of popular education. As a profession with a growing sense of professional responsibility, I do not believe we can continue to limit our efforts to securing greater technical excellence in the tools of our profession and to ignore the opportunity for rendering a service not wholly dissimilar in the field where public opinion and the social conscience are to be related to law.

The bar must make itself vocal in other than mere technical matters, of interest only to the practising lawyer. It should speak with authority in language which the lay public can understand of those social tendencies, of those popular misconceptions which tend to undermine sound legal institutions and to increase law breaking and our want of regard for law.

It is well for us to remember also that social reform through popular education is a slow process. It has long been our habit to attempt legal and social reforms in crusades carried on by more or less temporary organizations created as a result of some peculiarly flagrant manifestation of a condition which has long prevailed. I would not disparage any attempt at lessening crime or increasing our regard for and obedience to law.

However fleeting such activities may be they will at least contribute something to the necessary process of popular

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education and experience, but it would be folly for us to ignore the fact that the evils to be overcome are deep seated and of slow growth and they will not respond to hurried or superficial treatment. Organizations which aim at immediate results from an attempted solution of the problem of our lack of regard for law will run the risk that they will contribute little or nothing to the technical improvement of the law or to the methods of its enforcement for want of technical skill and scientific knowledge and that they will contribute less to the popular understanding of the subject because of their temporary character and the temptation to deal with the subject in a more or less hysterical fashion. They will be fortunate if the net results of the attempt is not the addition of some new unworkable or ineffective laws to our mass of useless statutes.

It is not needful or helpful for the members of our profession to become crusaders, but the time has come when we cannot rest content to be good technicians, skilled only in the practice of our profession and interested only, if at all, in its technical improvement. Our interest and our training must be extended into the field where the law touches good citizenship. Not only in the daily practice of our profession, in the office and the court room, but by the force of our precept and example in our contacts with our neighbors as well as by the pronouncements of our bar organizations, we must make our contribution to the education of democracy. So that while we carry forward the great work of the technical adaptation of law to our changing social order, we do what may be done to inspire confidence in the ultimate aims and purposes of the law and to hasten the adaptation of society itself to those principles which are fundamental to the successful operation of the law, to the end that it may not only be obeyed but that it may be respected by the great mass of our citizens and that disobedience to it by the occasional offender may be followed by punishment which is swift and certain.

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REPORT OF LEGISLATIVE COMMITTEE.

HON. OSCAR L. YOUNG.

No attempt will be made on the part of your committee, the personnel of which, unfortunately, has not changed, to review the statutory law which has been enacted since our report of a year ago, nor, with one exception, shall we comment upon or undertake to discuss any of the several acts.

Without doubt the most important thing done by the 1925 Legislature was the passage of the bill codifying our entire statute law, and when we finally get the completed work containing this sadly needed, long delayed, and much hoped for codification we shall indeed be thankful. To the commission which, by the diligence of its members, so promptly completed the task after it was assigned, all of us who are occasionally obliged to search the statutes will be under great obligation for some time to come.

When this somewhat voluminous mass, in the shape of the commission's report, was first placed before our General Court it almost brought on an acute attack of legislative gastritis, but, under the persistent and kindly ministrations of that eminent law doctor, the highly honored and greatly respected former Chief Justice of our Supreme Court, a complete recovery was had, without resorting to an operation or calling in a specialist, with the result that when the work is finally published we are told that we shall find that forty years' accumulations of underbrush have been successfully, completely, and officially removed from the great forest of our written law, thereby enabling us to discover its heretofore almost hidden recesses, as well as to travel its broad avenues, without exhaustive search and tiresome effort.

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The acquaintance of this new work can be made to some extent by examining the report of the commissioners. To do so is interesting, but reminds one of the story of the hermit who took a bath one springtime, and found a set of underflannels he did not know he had. There is hardly a subject which has not been touched upon in some way, and hardly any form of human activity which has not been regulated. It is almost as broad as the common law, but differs in one particular, at least, viz.: that it is not altogether founded upon reason.

By a glance at the table of contents we are surprised at the great variety of prohibitions, and for the first time realize that many lines of recreation and employment which for generations were considered as legitimate are closed or limited, unless permission is first obtained. A few illustrations selected at random may not be out of place, even before a group of lawyers:

Stallions, births, deaths, marriages, motorboats, motor vehicles, nurses, trademarks, and portable sawmills must be registered.

Chauffeurs, plumbers, peddlers, hunters, insurance agents, junk dealers, lightning-rod vendors, sanitaria, and dogs must be licensed.

One cannot register a motor vehicle, carry a revolver, set a trap, nor build a fire, even on his own land, without a permit.

No one can practice law, medicine, dentistry, chiropractic, optometry, chiropody, embalming, or veterinary medicine without first passing an examination. It is also interesting to note that practically all of these concessions cost something in fees, the amount of which seems in most instances to have been fixed arbitrarily; for example, it costs more to keep a dog than it does to get married.

When we consider the care and oversight which has been exercised in our behalf during a comparatively recent

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period we wonder how our ancestors were able to reach the age of maturity. Not only has the Legislature thrown a mantle of protection over dependent, defective, neglected, delinquent, and incorrigible individuals, but over the small group not included in those classes as well. It declares that when we are born into the world some one shall immediately wash our faces, and put one drop of nitrate of silver in each eye. Throughout life it prescribes to some extent what we may eat, and to a considerable extent what we may not drink; it requires us to wear some clothes, and dictates where, when, how long, and under what conditions we may work; and at the end of life, in its great wisdom, it still stands guard at our bedside, declaring that our circulatory system shall not be filled with corrosive sublimate unless the person so acting shall be at least twenty-one years of age, and shall have attained a grammar school education. Nor is the end yet, for in all its majesty, it follows us to the grave, and there threatens with fine and imprisonment any who shall desecrate our last resting place. Truly, in the words of a long dead, but well remembered member of our profession, a practitioner for many years in our County of Carroll, "These statutes are fearfully and wonderfully made."

In closing, we have but one recommendation to make. It is to be assumed that it was originally intended that this committee was to serve some useful purpose, and, with that end in view, we respectfully suggest and recommend that the incoming president appoint a new committee.

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AMERICAN CITIZENSHIP COMMITTEE.
REPORT
SEPTEMBER 25TH, 1925.

By James A. Broderick.

If there has been an American Citizenship Committee, during the past year, it has been inactive and has no report to make of its own work.

In the report made at the bar meeting for 1924, your committee recommended that a new committee be appointed, consisting of ten members, one for each county. This has not been done because it has been found impossible to interest the membership to the extent of enlisting their co-operation.

However, the Committee of the American Bar is very active. Josiah Marvel, Esq., of Wilmington, Del., and Philadelphia, is the Chairman, and must give to the Committee's duties a very large share of his time, judging from the mail matter that has come to me.

I find that the purpose of this committee, is not clearly understood. Its name, "The American Citizenship Committee," is misleading and makes our brothers think it is in some way related to the Americanization movement and designed to make one hundred per cent Yankees out of the Polanders, Greeks and Irish.

Nor is its slogan "To re-establish the Constitution in the minds and hearts of the people" more informing. Volsteadians acclaim it with delight, until they discover that the Committee is as much interested in the 4th amendment as it is in the 18th and that its purpose includes the prevention of the invasion of homes on fake search warrants or without warrant, quite as much, but no more than the enforcement of the liquor laws. While the slogan makes the

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Anti-Volsteadians, immediately conclude that it is some newly contrived scheme to put them in jail for taking a drink.

Nor has the work of the Committee any of the features or characteristics of an up-lift movement; it does not seek to impose upon the people or any of the people, the standards of conventions of a few, even of such superior few as the legal fraternity; in fact it is none of these. It is a movement founded upon the thought that this country of ours, in every phase of its well being and prosperity and of its history and traditions, is based upon the Constitution of the United States, and that there is a trend of events leading to the destruction of the Constituion.

It would oppose the pernicious activities of organized minorities moving to weave their addlepated theories into the fabric of the Constitution.

It would recognize the importance and force of the men and women avowedly organized to destroy the Constitution in its entirety and substitute Sovietism and would intelligently offset their propaganda among the very people to whom their efforts are directed.

It remembers that in the first eighty years and more of the Constitution, it was an intimate part of the life of every citizen and that the common man invoked its aid and protection and insisted upon its integrity upon every possible occasion.

In our day, it sees, that the Constitution is nothing sacred or inviolable, especially as between friends; that it has become the plaything of cranks, theorists, the selfish and the unpatriotic, and it would re-establish the Constitution in the minds and hearts of the people.

It seems to your committee, that this is a work which should enlist the earnest, even enthusiastic interest of the Bar and that our President should not have the difficulty

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he has experienced, of getting the Brethren to take it on with vigor.

Most states are doing the work well. The plan outlined by the American Bar Committee, is designed for States with great municipalities and not adapted to New Hampshire, but it is elastic enough so that the New Hampshire Committee can apply it effectively.

We renew the recommendation of last year, that the Committee be made up of ten members, one from each County for the year.

Signed,

J. A. BRODERICK.

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REMARKS ON HON. WILLIAM E. CHANDLER.

By Senator George H. Moses.

The general tenor of today's program was notably set forth in the suggestive address by Mr. Justice Stone who has compacted for us into a small volume of words his ripe experience at the bar, as Dean of a great law school, as head of an executive department, and as a member of our highest court. Our pleasure in listening to him is heightened by the recollection that he is a product of our own state ranking worthily among the four contributions which we have made to our highest bench and destined I hope to equal the record made by one of these four in that he, himself, will one day be Chief Justice of the United States.

Mr. Luce also — and I am sure we may acquit him of any collusion — has followed the line so admirably set by Mr. Chief Justice Stone; and I have been struck with a sense of his painstaking and accurate historical research as he has passed naturally from Mr. Justice Stone's theme to his own — and has spoken to us so sympathetically of the law makers whom New Hampshire has produced in such large number and so helpfully to the nation.

It is in no spirit of criticism that I venture to suggest an omission in the impressive list which Mr. Luce has exhibited to us. I wish that he had included in his characterizations some words of one whose life was devoted to the making and to the administering of law. He was a man known to most of us — because his span of public activity covered sixty years in the course of which there were few matters of consequence to this country with which he did not have contact actively and helpfully. I am referring to the late Honorable William E. Chandler, who, as a member of the Bar, as a

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prosecuting officer, as a reporter of decisions of the New Hampshire Supreme Court, as Solicitor for the Navy Department, as Assistant Secretary of the Treasury, as Secretary of the Navy, as United States Senator and as President of the Spanish Treaty Claims Commission, filled a place in the history of law making and law administration in this country excelled by none and equalled by few.

It was my privilege to have been associated continuously with him for nearly thirty years, to have enjoyed his confidence, to have shared his triumphs and his reverses, and to have benefitted daily by both his precept and his example. I am glad indeed to have this opportunity to say this much of him in the presence of this company of his brothers of the bar and to express my opinion that he constitutes the greatest contribution which our state has made to the public life of our country in his generation and that the record which he left is one of which New Hampshire should be proud even though New Hampshire may not hope speedily to equal it.

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IN MEMORIAM

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John Kivel

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HON. JOHN KIVEL.

By Hon. William H. Sawyer.

It is highly probable that the death of no other citizen of New Hampshire would have produced such widespread grief as that caused by the decease of the late Chief Justice, Hon. John Kivel, which occurred after a brief illness, at the Newport House in Sullivan County, on April 1, 1924. He was beloved by all who knew him.

Chief Justice Kivel was born in Dover, April 29, 1855, the only child of Patrick and Catherine Kivel. His parents were natives of the Emerald Isle. Of humble origin, and with parents of limited means, his success in life was largely the result of his own efforts.

He attended the public schools and for a time was a pupil in the Franklin Academy, in Dover. During some of his vacations he was employed in a drugstore, and he was fond of telling some of his experiences as a drug clerk.

He entered Dartmouth College in 1872, graduating in the class of 1876. Of his class at Dartmouth, ten became ministers of the gospel; seven chose the practice of medicine; seventeen adopted the law as a profession; twenty-one became educators; five followed journalism, and sixteen entered the field of business. A notable class indeed. Of those choosing the law as a profession, but two besides Judge Kivel, settled in New Hampshire, John Foster at Manchester, and Charles B. Hibbard, who for a few years practiced in Massachusetts, and then returned to his former home at Laconia, to join his father, Hon. Ellery A. Hibbard, who had a substantial law practice. Both Mr. Foster and Mr. Hibbard have died, the former before and the latter after the death of Judge Kivel.

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Upon leaving college, he entered the office of Frank Hobbs, an attorney living and practising in Dover. Mr. Hobbs, so the Chief Justice many times declared to the writer, was one of the ablest lawyers he ever knew. He was not only thoroughly grounded in the principles of law and the authorities declaring them, but he possessed a clarity of expression that he had never heard excelled. Furthermore his appreciation of the probative value of facts was keen and sagacious.

At this period, students pursuing the study of law did so largely in the office of some practitioner. Stenographers were not commonly engaged, and the typewriter was in its infancy. The telephone was in its swaddling clothes, and long distance telephones were not in use until Chief Justice Kivel had been in practice five years. Students were enabled to gather much experience from copying in long hand legal documents of a wide variety. They were frequently present at conferences of attorney and client, and thereby obtained a knowledge of the ways and means of preparing cases for trial, and the practical application of the rules of evidence, not afforded by the law schools.

Most of the lawyers with a large practice had one or more students, and shortly after Judge Kivel's admission to the bar, it was the custom of the students in Dover to gather, at stated intervals, in Judge Kivel's office, for a review of their work, and the discussion of legal problems, the solution of which had proved difficult for some of their numbers. At these gatherings, Judge Kivel entered into their discussions with great interest, and to their mutual helpfulness.

At the time of his admission, the Strafford County Bar contained among its more prominent members, Samuel Wheeler, Joshua G. Hall, Frank Hobbs, W. F. Nason, and A. G. Whittemore, of Dover, of whom the latter only now survives. At Rochester, there were Joseph Worcester and

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Charles B. Gaffney. At Somersworth was W. J. Copeland, W. R. Burleigh, and James A. Edgerly. In the adjacent county of Rockingham, into which Judge Kivel's practice extended to a very substantial extent, were Albert R. Hatch, John S. H. Frink, and Calvin Page, at Portsmouth; and Gilman Marston and Edwin G. Eastman, at Exeter. With such men of strong attainments, Judge Kivel practiced. In the trial of jury cases, he was the equal of any of them.

In speaking of Judge Kivel's ability as a trial lawyer, before the Strafford County Bar Association, at the February term of the Superior Court for the current year, Hon. Christopher H. Wells, of Somersworth, a contemporary of Judge Kivel, said:

> "He was particularly successful in the practice of jury cases, and the list of his victories in court is a long one. A great aid to the cross-examiner and advocate, as well as to the judge on the bench, is a thorough knowledge of human nature. Judge Kivel possessed such knowledge to a conspicuous degree. He understood human weaknesses and could discern underlying motives and purposes. As a cross-examiner, Judge Kivel was very tactful. He possessed quickness of thought and a ready aptitude in dealiing with the moods and demeanor of a hostile witness. He could question gently or with vigor as the occasion might demand, and moreover, he knew, as many lawyers do not know, when to cease questioning."

Judge Kivel was elected Solicitor for Strafford County and held that office during the four year period 1887-1893. During his last term as Solicitor, he unravelled the mysterious murder of Hiram Sawtelle, by his brother Isaac, and his abilities as a trial lawyer were never displayed to a higher advantage than during the trial, which resulted in the conviction of Isaac, upon which the extreme penalty

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of the law was pronounced. The defendant's exceptions were overruled, but the respondent cheated the gallows by three days, it being commonly understood that he committed suicide in his cell.

Attorney-General Daniel Barnard declared that Solicitor Kivel was entitled to all the credit for that remarkable trial and conviction.

Judge Kivel never had but one partner during his practice, Hon. George T. Hughes of Dover, who studied in his office and succeeded to the business of the firm upon Judge Kivel's accession to the bench.

It will be of interest to the bar to know that Judge Kivel's first case in the law term of the Supreme Court, was that of Ahern v. Mann, 60 N. H. 472, which is much used by presiding justices to tame a stubborn juror.

At the time of his admission, there were but fifty-seven New Hampshire reports, the last of which was published in 1877. The next volume did not appear until 1884, the delay being partly attributable to the fact that the court system of New Hampshire was changed twice during the period 1874-1877. At the time of his decease, there were eighty reports outstanding.

In 1903, Brother Kivel was appointed to the License Commission of the State, which office he continued to hold until his appointment to the bench in the spring of 1913. During the same period, he was a member of the Board of Police Commissioners for the city of Dover.

Hon. John M. Mitchell of Concord, an Associate Justice of the Superior Court of this State, died March 4, 1913 — a few hours after the inaugural of the late Hon. Woodrow Wilson as President of the United States. His demise removed the only member of the Superior Court of the Roman Catholic faith. The bar of the State unanimously turned to Judge Kivel for his successor. It was, however, only by Governor Felker's assenting to an increase of the salary

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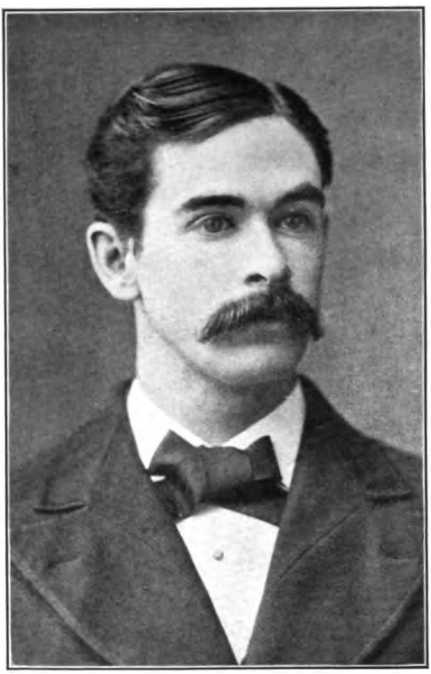

John Kivel

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from four thousand to forty-five hundred that Brother Kivel's assent was obtained. He was appointed and confirmed May 20, 1913. The popularity of his appointment was attested by the bar at a banquet given to Judge Kivel at the Eagle Hotel in Concord, which was attended by nearly every lawyer in the State. I am not aware of any other appointee to the bench, whose confirmation was sufficiently popular to call forth such an expression of general approval by the bar.

Judge Kivel's administration of justice was marked by success to a degree not surpassed by any other justice of our court, known to the present generation. Speaking upon that feature, Judge Wells, in his before-mentioned address said:

> "'Four things belong to a judge; to hear courteously, to answer wisely, to consider soberly and to decide impartially.' Thus wrote Socrates, the Greek philosopher, nearly 2500 years ago. These are the requisites of the judicial office today, and Judge Kivel's career on the bench exemplified the truth of that ancient observation. He was courteous and patient. Moreover, he was kindly and considerate toward young lawyers. His rulings on questions of evidence were prompt and carefully considered, and his decisions were based on broad and reasonable views of facts and law."

October 12, 1897, Brother Kivel married Eva G. Ennis of Dover, a daughter of Albert and Sophia A. (Horn) Ennis. To this union was born four children, Frank, born September 29, 1880, who died December 23, 1922; Maurice, born January 6, 1885; Alice, born February 24, 1889; and Lawrence, born July 11, 1897, who died January 9, 1919. Mrs. Kivel died but nine days after Lawrence. The sympathy of a multitude of friends was fully expressed to Judge Kivel during this double bereavement.

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Robert N. Chamberlin, Chief Justice of the Superior Court, died September 19, 1917, and His Excellency, Hon. Henry W. Keyes, who for many years was associated with Judge Kivel as a member of the Licence Commission of New Hampshire, nominated Judge Kivel as Chief Justice. He was appointed and confirmed October 4, 1917. At the time of his decease, he lacked practically thirteen months of completing the constitutional period of his office.

His funeral, held in the church of his faith, in Dover, where for all his life he had been a communicant, was most impressive. The large edifice could not contain all who attended, but the large number of sorrowing friends who could not gain admittance remained outside until his remains passed out through the grieving throng, to be taken to his final resting place. A good man, an honest and upright judge, a most enjoyable companion, a devoted husband and father, had gone to his reward. Peace be to his ashes.

May the title which his friends so fondly and frequently applied to him after his appointment as C. J., of "Charitable John" follow him.

Most humbly submitted by one who loved him as though he were a brother.

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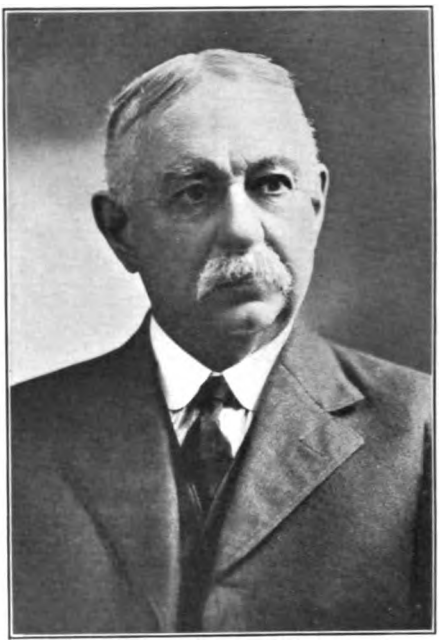

Charles W. Hoitt

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CHARLES W. HOITT

By J. J. Doyle

Mr. President and Members of the Hillsborough County Bar:

I presume that I have been invited to say a word for our departed brother on account of my many years of intimate acquaintance and association with Judge Hoitt.

Judge Charles W. Hoitt was born in the neighboring town of Newmarket, this state, on the twenty-first day of October, 1847, and, after his preliminary education, he took up the profession of law. Judge Hoitt lived to the age of seventy-seven years, five months and eleven days. He died in the town of Scituate, state of Massachusetts, on the second day of April, 1925.

After his preliminary education, he entered Dartmouth College and graduated with the class of 1871. Very soon after his graduation, he took up the study of law in the office of Edwin M. Wheeler, of Dover, and continued in that office about a year, when he came to the city of Nashua in 1872.

He took charge of the Mt. Pleasant School of Nashua as master and remained in that position until along in 1874 when he went to Boston and was master of the Lincoln Grammar School for about a year.

He then returned to Nashua and completed his legal education and was admitted to the bar in 1877. He immediately opened an office and took up the active practice of his profession. Judge Hoitt at once attracted to himself a large clientage, among which were some of the leading corporations of our city. He was a promising lawyer and he fulfilled the promise that was held out. He was a splendid type of man. He was dignified, courteous and absolutely honorable in his dealings with men. He was soon recognized as

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a useful citizen and because of his eminent fitness for that position, the citizens of Nashua elected him to the Board of Education. He was a member for very many years. He took a very large interest in education. His early training led him in that direction, and, although a busy man, he still had time to assist in that work. He also was appointed trustee of various city boards and in every position of trust, Judge Hoitt brought ability, dignity and absolute fairness.

He was interested in politics to a very large extent. He was a Republican and you knew where to find him. He hadn't any use, and I admired him for it, for these modern politicians who say "Yes, yes," and "No, no," to everything. He was a positive man. If it was right, it was "yes" or "no"; there was no half-way with Judge Hoitt.

His ability and loyalty to party were very soon recognized. He was selected to represent his party in the legislature from his ward. He also represented his district in the state senate, and when that body was organized he was selected as presiding officer. All those of you who knew Judge Hoitt know that he brought to that office dignity, ability and fairness as presiding officer.

He also was highly regarded by his brother lawyers as well as the laymen of Nashua. That was his field of action largely in Nashua.

In addition to being very largely interested in politics, he was also interested in fraternal work. He was a member of leading fraternal organizations of our city. He was placed in the highest and most responsible positions of trust in those organizations.

Judge Hoitt was never happy except when he was working for some worthy cause and helping some unfortunate brother. He was clerk of the Municipal Court for years; City Solicitor from 1885 to 1888; appointed Judge of the Municipal Court in 1889 and held that office until he was appointed United States District Attorney in 1907. He

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served in President Roosevelt's administration in that position. The lawyers of the state of New Hampshire had occasion to witness Judge Hoitt in the discharge of his duties as United States District Attorney and I have yet to find a man, who had anything in the way of business with Judge Hoitt while he occupied and filled that honorable position, who had anything but words of praise, and not a word of condemnation. The universal opinion and verdict was, that he was a fair, just and capable prosecuting attorney.

I want to speak of Judge Hoitt briefly and of him especially as a Judge of the Municipal Court. I want to say right here, brothers, there is no position that I know of in New Hampshire or in any other state, where a man can do more good for the community, for the building up and making of good citizens than as a presiding officer in our municipal courts. Judge Hoitt was a type of man who loved children. I had a great deal to do with Judge Hoitt. I spent a great deal of time in representing one case and another in Municipal Court. I can speak of him as he really was. He was a splendid type of a splendid man. He took a great deal of interest in the younger boys. And some of the older lawyers here will bear me out in that assertion.

Before we had statutes appointing probation officers and juvenile courts, this good man had a juvenile court and a rule for probation of his own.

Whenever a boy, early in years, appeared before him as Judge, he was that boy's friend. I want to say, and we have the clerk of the Municipal Court here and he can go back to the records and look them up but he can't find a boy that was sent to Industrial School, who had any good in him. He had a method of investigating cases. He would look into the lives and surroundings of the boys, besides asking the officers. Some unnatural parent, or step-father or step-mother who might come in with complaints, charging

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the youngster with being disobedient and asking to have the youngster sent away had no influence with him. Any case of that kind Judge Hoitt used to investigate, and he did it personally, and instead of the youngster being reprimanded the parent was brought before Judge Hoitt's desk. He was the friend of boys and today we have men and women, looked upon as our best people, thanks to his kindly offices and kindly direction received when they were young and possibly made a mistake. They were never brought into police court. Judge Hoitt had a room where he took and advised those young fellows, who in due time became conscientious and responsible citizens. We will remember what he did in our police court for many of our young boys and girls more than anything else he did in his forty-six years of residence in our city. Those who were close and near to the judge will remember his record as a presiding justice when all other things are forgotten. In his court he insisted upon order and due consideration for the presiding justice, and let me pay him this compliment, in turn Judge Hoitt carried out what he preached and exacted in his own court room, as he would enter the Superior Court. No man would come into the court room and show more respect for the court than Charles W. Hoitt.

He was genial in every sense of the word. He was a good lawyer and also a dear friend. He had many attractions which people recognized and which would bring people to him. Judge Hoitt was a fine student of literature and history. In his library upon the shelves would be found the finest works of literature.

I am told, although I am not a judge of Shakespearian scholarship myself, I am told that Judge Hoitt was one of the best Shakespearian scholars in the city of Nashua.

In addition to all these noticeable traits of this good man, he was also very much interested in out-door work. He had a home on Concord Street. It was a show place. He had

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flowers of all descriptions, roses, lilacs beyond number and description; in his pigeon loft were the choicest of pigeons, the most valuable of bantams. Yet all this was not done for him and his family. It was his custom at least once during the year, to invite the public of Nashua to come and enjoy his home and surroundings with him. Judge Hoitt loved Nashua and his people. You lawyers and laymen of Nashua loved Judge Hoitt and will remember him and what he did for Nashua and for the poor, wayward boys and his interest in children as long as you are blessed with a memory. Judge Hoitt was an ideal friend. Many of us and those of us who were privileged to attend gatherings and banquets where this brother has presided will ever remember the rare treat we received on those occasions. He had the right thing to say at the right time and at no time can I remember that any person present objected in any way or left with any sign of irritation. He knew just how to meet his friends and if you could go him one better, that was your gain, but I don't think anybody ever put anything over the Judge. He was a splendid story teller and had the keenest of wit.

The tragedy of his life was that he wasn't blessed in having his two little boys spared to him and his good wife. They both died young, but he would speak of Richard as "My boy Dick" and Robert as "Bob." He loved children. He always had the children's interest at heart.

I could go on and enumerate many, many instances of his labors and work, but it is sufficient to say that the Nashua lawyers and Nashua laymen will remember Judge Hoitt as one of our most distinguished and able citizens.

Forty-six years he spent in Nashua, but when he left us in 1921, the lawyers had a little banquet. It was a pleasant thing to do this for the Judge, but it was a sad gathering, because we had to part with one of our dear friends and fellow citizens, and most upright lawyers and judges. Be-

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lieve me, brothers, it was a pleasure for me to go into his court. We took his order generally on important legal questions to which he gave his attention. There were very few appeals to the Superior Court. When he handed down an opinion, even though against us, we were satisfied it was the result of an honest man. When he acted, he wasn't influenced by any man or by politics, creed or race. They were all the same to him. He was a just, honest and square judge. He gave what he understood and sincerely believed was right and we bowed to his rulings, because we felt we were dealing with a man who had as a rule the only object in view, to do the square thing.

Judge Hoitt is missed by all of us who knew him and especially is he missed by the Nashua lawyers. We feel his loss keenly.

I hardly know what more to say, except this—that Judge Hoitt was never happy except when he was doing good for others. He was unselfish in his work; he was faithful to his friends; he was true and loyal to the citizens of Nashua; and a firm believer in his profession, and a just judge.

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Frank Otis Chellis

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FRANK OTIS CHELLIS

By Mr. John McCrillis

Frank Otis Chellis was born in Meriden, August 7, 1858, the son of Otis Hutchins and Betsy (Morrell) Chellis, and died in Newport, March 3, 1921. He came to Newport to reside when a boy of 12 years of age, where he attended the public schools, graduating from the Newport High School in the class of 1878. He graduated from Kimball Union Academy at Meriden in 1880 and from Dartmouth College in the class of 1885. He was a member of the Alpha Delta Phi Society. While in college he was captain of both his class and varsity baseball teams, and was class poet.

December 6, 1892, he married Miss Emma G. Wilmarth of this town, to whom two children were born, Miss Bernice Louise Chellis of New York City, who has taken care of him during his illness with the assistance of her mother and a nurse friend, Miss Becker of New York City, and Robert Wilmarth Chellis of Boston.

Mr. Chellis was principal of the Newport High School for nine years and had been president of the Newport High School Alumni Association and a member of the Board of Education, Town Moderator, and County Solicitor, a Trustee of the Carrie F. Wright Hospital and of the Sugar River Savings Bank. He served faithfully as Clerk of the Sullivan County Exemption Board during the World War, a work which required a great amount of work and anxiety and which told effectively on his health. He was also for a long time a member of the Newport Fire Department, in which he served as an assistant engineer. He was a member of Mount Vernon Lodge, No. 15, A. F. & A. M., the Chapter of the Tabernacle, No. 19, R. A. M., Sullivan Com-

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mandery, Knights Templar, and Aurora Chapter, No. 33, O. E. S. In religious faith he was a Unitarian.

After studying law in the office of the late Albert S. Wait, he began the practice of law, and became one of the eminent lawyers of Sullivan County and the State.

Mr. Chellis always took an active interest in the affairs of the town and was never known to shirk any duties in connection therewith. Politically he was a staunch Democrat and one of the leaders of that party in all its activities. Especially was he interested in school affairs and recreation movements for the benefits of the school children, and was instrumental in the founding of the Carrie F. Wright hospital.

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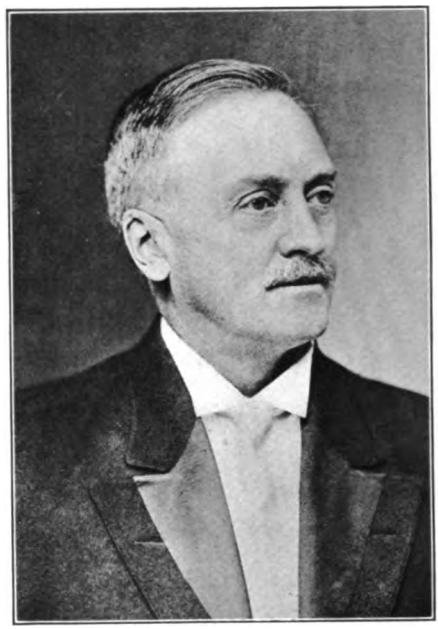

George Burnham Cox

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GEORGE BURNHAM COX.

By Frederick W. Fowler of Laconia.

In the late afternoon of November 20th, 1924, George Burnham Cox, senior member of the law firm of Cox & Fowler, of Laconia, New Hampshire, passed out through the doorway of his office, in apparent high spirits, to attend to a matter in the Belknap County Superior Court, and the office, part and parcel of his life for more than thirty years, was to know him no more forever. Mr. Cox passed from earth at about eleven a.m. Friday, November 21, 1924.

George Burnham Cox was born in Ashland, New Hampshire, July 16, 1860. His paternal ancestors were among the first settlers of Holderness, New Hampshire, and his mother, who was before her marriage, Ann Currier, was of Scotch descent.

Mr. Cox's father, Benjamin Franklin Cox, was a farmer, and the subject of this sketch spent his childhood days on the home farm amid the rare natural beauties of the Asquam Lake region. He attended the district school in Ashland, a private school in Plymouth, New Hampshire, the New Hampton Literary Institution, where he was class orator, and Wesleyan University. After graduating from the latter he took up the study of law in the office of Judge Ellery A. Hibbard, of Laconia, in 1885.

After two years spent in the office of Judge Hibbard, Mr. Cox entered Boston University Law School from which he graduated in 1888 with a degree of Bachelor of Law. He took the examination for admission to the New Hampshire Bar on July 20th, 1888, and was admitted August 2, 1888.

Mr. Cox had some time prior to this decided to make Laconia his home, his father having died September 4, 1884, and his mother having taken up her residence in the Lake

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City. The early part of the year 1889 found Mr. Cox engaged in the practice of his chosen profession in Laconia with Napoleon J. Dyer, under the law firm of Cox & Dyer, in the Smith Block on Main Street, and his entire professional life was spent at the same location.

In 1905 the firm of Cox & Dyer having been dissolved some time before, Mr. Cox took in as a law partner Frederick W. Fowler, of Laconia, New Hampshire, who had been a student in his office, and he was admitted to the New Hampshire Bar in December of that year, and the partnership of Cox & Fowler continued from that time to the death of Mr. Cox.

In politics Mr. Cox was a Democrat and for many years he did very efficient service for his party in the form of public speaking in connection with many political campaigns. Before coming to Laconia he was Chairman of the Board of Education in the town of Ashland, and also taught school in that town, and in New Hampton and Candia, New Hampshire. It was, however, Laconia, "The City on the Lakes," the home of his adoption, which was always nearest to his heart, and wherein the many activities of his busy and useful life were spent.

George B. Cox was unusually gifted as a public speaker, and his ability and rare eloquence in this respect when he was in his prime earned him the title of "the silver tongued orator of the Belknap County Bar." As early as March 19, 1899, the Laconia Democrat said of Mr. Cox: "Mr. Cox fully maintained his invincible position as one of the best public speakers among the lawyers."

The confidence and esteem in which Mr. Cox was held by his fellow citizens is evidenced by the public offices awarded him by them: He was the first Democratic mayor of the City of Laconia, a city naturally very strongly Republican, he being elected March 11, 1913, by a large majority, and re-elected March 10, 1914, for a second term. During his

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service as Mayor Mr. Cox gave of his time and ability without stint in every case which he believed to be for the best interest of the city, and it was largely through his efforts that the city secured the first bridge of cement construction, the Elm Street Bridge at Lakeport, which, with the bronze plate bearing his name, stands today as one of the best and most fitting monuments to his memory. Mr. Cox was a member of the Board of Trustees of the Laconia Savings Bank, and of the Laconia Home for the Aged, was President of the Laconia Board of Trade for several years, a member of the executive committee of the Winnipesaukee Camp Meeting Association, a member of the New Hampshire Bar Association and the Belknap County Bar Association, and of the Knights of Pythias.

He was also a member of the advisory board of the Laconia Salvation Army Corps and in this connection he did a great deal of work in furthering the acquisition of, and the improvements in connection with, the Home of the Army in this city. He was one of the committee of the Laconia Savings Bank for the extensive improvements made in connection with the block in which this bank is located, and which improvements were not completed at the time of his death. In this work he gave much of his time and was intensely interested in watching the progress of the work from day to day up to his last illness.

Mr. Cox was a member of the First Methodist Episcopal Church of Laconia. He was a regular attendant here and he was the organizer of the Men's Class, which through his efforts gained an extensive and large membership, and he was its teacher for sixteen years. He was liberal in his religious views, but he believed that the sabbath day should be strictly observed, and he consistently refused to even consider any business matter on that day. So sincere was he in this that on one occasion when he found himself unconsciously engaged in the mental consideration of plans

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regarding the sale of certain lots, owned by him, on Sunday, he announced his decision that any profit accruing he should donate to the Church.

George B. Cox was a good lawyer, and an intensely earnest, careful and sympathetic counsellor. He had the highest regard for preservation of his professional honor, and would never take a case unless fully convinced of the justice of his client's cause. When his decision was made, however, he always fought for his client with the unmost earnestness and loyalty, but never unfairly, and if defeat came he would often take it more to heart than his client.

Mr. Cox was pre-eminently a lover and friend of dumb animals and many times rushed from his office to the street to protect some horse or dog which he felt was being ill-treated. He was thrilled with the beauty of the lake and mountain scenery of his native State, and never tired of expressing his admiration for the beauties of nature.

When the best interests of his home city were concerned Mr. Cox was public spirited to a high degree and always willing and eager to give without stint of his time and ability to any public cause.

Mr. Cox was married February 10th, 1897, to Mrs. Nellie M. Hoyt of Laconia, and was blessed with a most devoted wife and a home with all the highest ideals which that word implies, and here his chief interest lay. His wife survived.

George B. Cox accomplished all his life's work under the handicap of a frail physical constitution, intensified by the terrible affliction of asthma, whose relentless hand ofttimes seized his throat with a grip which seemed about to extinguish life itself.

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